CHAPTER 408

LEGAL TENDER AND INTEREST

LEGAL TENDER

INTEREST

INTEREST ON SMALL LOANS

SECOND MORTGAGE LOANS

RETAIL CREDIT SALES

BUYER'S DEFENSES AGAINST HOLDER OF CREDIT INSTRUMENT

VARIABLE RATE OF INTEREST CERTAIN LOANS

LENDERS OF UNSECURED LOANS UNDER FIVE HUNDRED DOLLARS

LOAN DISCRIMINATION

DEFAULTS

RESIDENTIAL REAL ESTATE LOANS

RIGHT TO FINANCIAL PRIVACY ACT

CROSS REFERENCES

Credit cards accepted for payment of taxes and fees by department of revenue, charge for card use, expires, when, RSMo 32.063
Loan brokers, advance fees prohibited, RSMo 367.305
Pawnbroker loans, interest rate, RSMo 367.021
Persons, firms and corporations not subject to administrative penalties for acts performed in reliance on written interpretations of this chapter by division of finance, RSMo 361.729
Regulation of small loans, RSMo 367.100 to 367.200
Retail credit financing institutions, Chap. 364, RSMo
Written interpretations of this chapter, reliance upon as defense to administrative action, RSMo 361.729

LEGAL TENDER

408.010. Silver a legal tender. - The silver coins of the United States are hereby declared a legal tender, at their par value, fixed by the laws of the United States, and shall be receivable in payment of all debts, public or private, hereafter contracted in the state of Missouri; provided, however, that no person shall have the right to pay, upon any one debt, dimes and half dimes to an amount exceeding ten dollars, or of twenty and twenty-five cent pieces exceeding twenty dollars.
(RSMo 1939 § 3359)
Prior revisions: 1929 § 2972; 1919 § 7100; 1909 § 8099

INTEREST

408.015. Definitions. - As used in sections 408.020 to 408.562:

(1) **"Bank"** shall mean bank, trust company, or bank and trust company;

(2) **"Business loan"** shall mean a loan to an individual or a group of individuals, the proceeds of which are to be used in a business or for the purpose of acquiring an interest in a business. The term shall also include a loan to a trust, estate, cooperative, association, or limited or general partnership;

(3) **"Corporation"** shall mean any corporation, whether for profit or not for profit, and including any urban redevelopment corporation;

(4) **"Lender"** shall include any bank, savings and loan association, credit union, corporation, partnership, or any other person or entity who makes loans or extends credit;

(5) **"Monthly Index of Long Term United States Government Bond Yields"** shall mean the monthly unweighted average yield for all outstanding United State Treasury bonds neither due nor callable in less than ten years, based on the daily closing bid prices in the over the counter market, as determined by the Board of Governors of the Federal Reserve System, published in the Federal Reserve Bulletin, and expressed in terms of percent per annum;

(6) **"Residential real estate"** shall mean any real estate used or intended to be used as a residence by not more than four families, one of whom is the borrower;

(7) **"Residential real estate loan"** shall mean a loan made for the acquisition, construction, repair, or improvement of, or secured by, residential real estate. The term shall also include any loan made to refinance such a loan. No loan secured by residential real estate shall be considered to be a business loan unless such loan meets the requirements of subdivision (2) of this section and subdivision (2) of section 408.035.
(L. 1974 2d Ex. Sess. S.B. 1, A.L. 1979 S.B. 305, A.L. 1982 H.B. 1341, 1473, 1474 & 1475)

408.020. When no rate of interest is agreed upon, nine percent allowed as legal interest. - Creditors shall be allowed to receive interest at the rate of nine percent per annum, when no other rate is agreed upon, for all moneys after they become due and payable, on written contracts, and on accounts after they become due and demand of payment is made; for money recovered for the use of another, and retained without the owner's knowledge of the receipt, and for all money due or to become due for the forbearance of payment whereof an express promise to pay interest has been made.
(RSMo 1939 § 3226, A.L. 1979 S.B. 305)
Prior revisions: 1929 § 2839; 1919 § 6491; 1909 § 7179
(1952) Where assignee of life insurance policies paid premiums thereon, but did not surrender same for their cash value so as to cause them to become due and payable, they became due and payable upon the death of insured, so that interest or right to reimbursement for premiums under this statute did not accrue prior to such death. Boyle v. Crimm, 363 Mo. 731, 253 S.W.2d 149.
(1955) Demand for real estate broker's commission is unnecessary to start running of interest where such commission becomes due under contract. Doerflinger Realty Co. v. Fields (A.), 281 S.W.2d 609.
(1958) In absence of demand for payment of unwritten account, the filing of suit substitutes therefor and the interest bearing period starts as of the date of the verdict. The verdict need not separately state the amount of interest allowed and error in amount allowed may be cured by remittitur. Weekley v. Wallace (A.), 314 S.W.2d 256.
(1960) Where water district bonds contained no provision for the payment of interest after maturity, the statutory interest rate applied after demand was made. State ex rel. Stern Bros. & Co. v. Stilley (Mo.), 337 S.W.2d 934.
(1961) Where laborer filed a claim against contractor on his bond but the evidence did not show that he ever made a demand for payment against the principal in the bond, the bonding company would not be liable for any interest until such time as demand was made and therefore in this case the allowance of interest was improper. Phoenix Assurance Co. of New York v. Appleton City, 296 F.2d 787.
(1962) In action to recover balance due on subcontract for covering subgrade with topsoil, the fact that parties honestly disagreed as to amount of fill provided under subcontract did not make the sum due thereunder unascertainable and court did not err in allowing interest thereon from date of acceptance of the work. Eastmount Const. Co. v. Transport Mfg. & Equip. Co., 301 F.2d 34.
(1964) A promissory note which provides when the indebtedness evidenced thereby becomes due and payable is a written agreement within the meaning of this section and a demand of payment is not necessary to start the accrual of interest under the statute. Sebree v. Rosen (Mo.), 374 S.W.2d 132.
(1966) Court did not err in directing jury to award interest if they found for plaintiff, instead of only permitting it to do so. Schultz v. Queen Insurance Co. (A.), 399 S.W.2d 230.
(1974) Held that amount due was readily ascertainable and interest from original demand was part of measure of damages even though the sum originally demanded was far in excess of the sum finally stipulated as owing. Slay Warehousing Co., Inc. v. Reliance Insurance Co. (C.A. Mo.), 489 F.2d 214.
(1985) Issue of prejudgment interest and all the facts necessary for an award must appear in the petitions. Folk v. Countryside Casualty Co. (Mo. App.), 686 S.W.2d 882.
(1986) Prejudgment interest is not available for breach of a contract where damages are based upon lost profits. Universal Power Systems v. Godfather Pizza, 818 F.2d 667 (8th Cir. 1987).
(1987) Where amount of debt was disputed and where one party claimed that other party was estopped from claiming true debt, amount was not liquidated or readily ascertainable by reference to recognized legal standards as required by this section. Total Petroleum, Inc. v. Davis, 822 F.2d 734 (8th Cir. 1987).

408.030. Interest, maximum rate allowed - penalty for overcharge, limitation on action for - "market rate" to be determined, when, how - discounting to financial organizations authorized. - 1. Parties may agree, in writing to a rate of interest not exceeding ten percent per annum on money due or to become due upon any contract, including a contract for commitment; except that, when the "market rate" exceeds ten percent per annum, parties may agree, in writing, to a rate of interest not exceeding the "market rate". A contract for

commitment to lend money shall not exceed the maximum lawful rate in effect on the date of such contract. A loan entered into pursuant to a valid contract for commitment shall not exceed the maximum lawful rate in effect on the date of such commitment. The **"market rate"** for any calendar quarter shall be equal to the monthly index of long term United States government bond yields for the second preceding calendar month prior to the beginning of the calendar quarter plus an additional three percentage points rounded off to the nearest tenth of one percent. Calendar quarters begin on January first, April first, July first, and October first.

2. If a rate of interest greater than permitted by law is paid, the person paying the same or his legal representative may recover twice the amount of the interest thus paid, provided that the action is brought within five years from the time when said interest should have been paid. The person so adjudged to have received a greater rate of interest shall also be liable for the costs of the suit, including a reasonable attorney's fee to be determined by the court.

3. On or before the twentieth day of the last month of each calendar quarter the director of the division of finance shall determine the monthly index of long term United States government bond yields for the second month of that quarter and shall determine the market rate of the next succeeding quarter. The director of the division of finance shall cause such market rate to be posted pursuant to section 361.110, RSMo, and to be published in appropriate publications; such market rate to be effective on the first day of the next succeeding calendar quarter.

4. Any bank, trust company or savings and loan association may purchase any note, bill of exchange, or other evidence of debt, payable in installments or otherwise, regardless of where payable, at a price that may be agreed upon.

(RSMo 1939 § 3227, A.L. 1974 2d Ex. Sess. S.B. 1, A.L. 1979 S.B. 305)
Prior revisions: 1929 § 2840; 1919 § 6492; 1909 § 7180
(1960) Equipment was purchased and chattel mortgage given therefor which recited that the time price of the equipment was a specific amount, and stated that the purchaser would pay to the order of the creditor in thirty-six monthly installments the total amount of the time price, the transaction was not usurious notwithstanding the difference between the cash price and the time price was considerably in excess of the 8% interest allowed by statute. Wyatt v. Commercial Credit Corp. (A.), 341 S.W.2d 348.

408.031. Fee in lieu of interest may be charged on loan - exception. - In lieu of the rate established under section 408.030, parties may agree in writing to a fee of ten dollars on any loan; provided, however, that no lender shall permit any borrower to be indebted to such lender on two or more contracts at any given time for the purpose or with the result of contracting for or receiving fees exceeding that permitted by this section.
(L. 1977 S.B. 420 § 2, A.L. 1979 S.B. 305)

408.032. Recording fees. - 1. Notwithstanding any provisions of law to the contrary, the recording fees, including actual fees paid to a third party by a creditor, may include the following:

(1) Any fee paid in processing the debtor's liens as provided in section 136.055, RSMo;

(2) Any fee paid to a third party for expediting the debtor's motor vehicle or other title or lien with the department of revenue, provided:

(a) The creditor does not control the third party; and

(b) Both creditor and third party do not share common ownership.

2. Either fee provided for in subdivisions (1) and (2) of subsection 1 of this section may be charged such debtor, and is not included as interest or service charges for the purposes of state usury laws; except that the expeditor fee as provided in subdivision (2) of subsection 1 of this section may not exceed six dollars.
(L. 1997 H.B. 257)

408.035. Unlimited interest, when allowed. Notwithstanding the provisions of any other law to the contrary, it is lawful for the parties to agree in writing to any rate of interest, fees, and other terms and conditions in connection with any:

(1) Loan to a corporation, general partnership, limited partnership or limited liability company;

(2) Business loan of five thousand dollars or more;

(3) Real estate loan, other than residential real estate loans and loans of less than five thousand dollars secured by real estate used for an agricultural activity; or

(4) Loan of five thousand dollars or more secured solely by certificates of stock, bonds, bills of exchange, certificates of deposit, warehouse receipts, or bills of lading pledged as collateral for the repayment of such loans.

(L. 1974 2d Ex. Sess. S.B. 1, A.L. 1980 H.B. 1195, A.L. 1981 S.B. 5 Revision, A.L. 1992 S.B. 688, A.L. 1997 H.B. 655 and S.B. 170)
Effective 6-24-97 (H.B. 655) 5-20-97 (S.B. 170)
(1994) Where statute allows unlimited interest on loans in excess of five thousand dollars secured by real estate used for agricultural activity, banking regulation, C.S.R. 140-6.050, relating to contingent interest and limitations on its application to profitability and successful operations of businesses, is not inconsistent and statute does not entitle bank to ignore limitation of banking regulation. Contingent interest provision of bank note was invalid and unenforceable. Killion v. Bank Midwest, N.A., 886 S.W.2d 29 (Mo. App. W.D.).

408.036. Prepayment penalty by lender prohibited, exception - maximum permitted, exceptions - return of moneys above maximum permitted. – Notwithstanding any other provision of this chapter to the contrary, no prepayment penalty shall be charged or exacted by a lender on any promissory note or other evidence of debt secured by residential real estate when the full principal balance thereof is paid after five years from the origination date and prior to maturity; and in no event shall any prepayment penalty exceed two percent of the balance at the time of prepayment, except for, when an existing mortgage loan is replaced with a new mortgage loan made by another lender and the proceeds from the new loan are used to either pay down or reduce the balance to a smaller amount before paying in full and in order to avoid or reduce the prepayment penalty. In such an occurrence the prepayment penalty shall not be more than two percent of the average daily balance for the prior six months, provided that the 1990 and 1992 reenactment of this section shall not be construed to be action taken in accordance with Public Law 96.221, Section 501(b)(4). Any fees received in excess of those permitted pursuant to this section shall be returned to the person from whom received upon demand. Business and corporate loans are not subject to the provisions of this section.
(L. 1974 2d Ex. Sess. S.B. 1, A.L. 1979 S.B. 305, A.L. 1990 H.B. 1125, A.L. 1992 S.B. 688, A.L. 1998 H.B. 1189)

408.040. Interest on judgments, how regulated - tort cases, prejudgment interest allowed when, procedure. - 1. Interest shall be allowed on all money due upon any judgment or order of any court from the day of rendering the same until satisfaction be made by payment, accord or sale of property; all such judgments and orders for money upon contracts bearing more than nine percent interest shall bear the same interest borne by such contracts, and all other judgments and orders for money shall bear nine percent per annum until satisfaction made as aforesaid.

2. In tort actions, if a claimant has made a demand for payment of a claim or an offer of settlement of a claim, to the party, parties or their representatives and the amount of the judgment or order exceeds the demand for payment or offer of settlement, prejudgment interest, at the rate specified in subsection 1 of this section, shall be calculated from a date sixty

days after the demand or offer was made, or from the date the demand or offer was rejected without counter offer, whichever is earlier. Any such demand or offer shall be made in writing and sent by certified mail and shall be left open for sixty days unless rejected earlier. Nothing contained herein shall limit the right of the claimant, in actions other than tort actions, to recover prejudgment interest as otherwise provided by law or contract.
(RSMo 1939 § 3228, A.L. 1979 H.B. 85, A.L. 1987 H.B. 700)
Prior revisions: 1929 § 2841; 1919 § 6493; 1909 § 7181

CROSS REFERENCE

Interest as part of damages in action for conversion of goods, RSMo 537.520
Medical and health care providers, malpractice sections, 538.205 to 538.230; section 408.040 not applicable, RSMo 538.300

(1953) Where insurance companies which disclaimed liability to mortgagor, deposited proceeds of fire insurance policies in court during pendency of litigation for sole use of mortgagee and claimed right of subrogation to recover money back from mortgagor although he had paid premiums, they were liable for interest from date of judgment of circuit court in favor of mortgagor, City of New York Ins. Co. v. Stephens (Mo.), 260 S.W.2d 558.

(1957) Where allowance of claim by probate court was affirmed by circuit court but reversed and remanded on appeal and thereafter again allowed by judgment of circuit court, interest ran from date of last judgment of circuit court only. Minor v. Lillard (Mo.), 306 S.W.2d 541.

(1960) Where city deposited amount of judgment in condemnation action in court, it could enforce possession of the condemned land even though interest on judgment was not so deposited. Mayor, etc. of Liberty v. Boggess (A.), 332 S.W.2d 305.

(1964) Where prevailing plaintiff was required to remit part of judgment and a new judgment for reduced amount was entered as of the date of the original judgment, the plaintiff was entitled to interest on the amount of the new judgment from the date of the original judgment. Walton v. United States Steel Corp. (A.), 378 S.W.2d 240.

(1966) In suit for disbursement of funds paid into court, one interpleader is not entitled to interest for the period he was denied payment due to other interpleader's unsuccessful appeal. Winterton v. Van Zandt (A.), 397 S.W. 2d 693.

408.050. Excess interest paid recoverable with costs and attorney fee. - No person shall directly or indirectly take, for the use or loan of money or other commodity, above the rates of interest specified in sections 408.020 to 408.040, for the forbearance or use of one hundred dollars, or the value thereof, for one year, and so after those rates for a greater or less sum, or for a longer or shorter time, or according to those rates or proportions, for the loan of any money or other commodity. Any person who shall violate the foregoing prohibition of this section shall be subject to be sued, for any and all sums of money paid in excess of the principal and legal rate of interest of any loan, by the borrower, or in case of borrower's death, by the administrator or executor of his estate, and shall be adjudged to pay the costs of suit, including a reasonable attorney's fee to be determined by the court.
(RSMo 1939 § 3229)
Prior revisions: 1929 § 2842; 1919 § 6494; 1909 § 7182

(1962) In action by borrower against bank to recover alleged usurious interest, parol evidence to effect that loan was to be for one year and that bank fraudulently induced borrowers to sign five year loan agreement and required additional payment at end of one year to close out loan, was inadmissible. Reich v. Pine Lawn Bank & Trust Co. (A.), 356 S.W.2d 545.

(1964) This section is not applicable to pawnbroker loans. McClure v. Norwick (A.), 382 S.W.2d 731.

408.052. Points prohibited, exception - penalties for illegal points - violation a misdemeanor - default charge authorized, when, exceptions. - 1. No lender shall charge, require or receive, on any residential real estate loan, any points or other fees of any nature whatsoever, excepting insurance, including insurance for involuntary unemployment coverage, and a one percent origination fee, whether from the buyer or the seller or any other person, except that the lender may charge bona fide expenses paid by the lender to any other person or entity except to an officer, employee, or director of the lender or to any business in which any officer, employee or director of the lender owns any substantial interest for services actually performed in connection with a loan. In addition to the foregoing, if the loan is for the construction, repair, or improvement of residential real estate, the lender may charge a fee not to exceed one percent of the loan amount for inspection and disbursement of the proceeds of the loan to third parties. Notwithstanding the foregoing, the parties may contract for a default charge for any installment not paid in full within fifteen days of its scheduled due date. The restrictions of this section shall not apply (1) to any loan which is insured or covered by guarantee made by any department, board, bureau, commission, agency or establishment of the United States, pursuant to the authority of any act of Congress heretofore or hereafter adopted; and (2) to any loan for which an offer or commitment or agreement to purchase has been received from and which is made with the intention of reselling such loan to the Federal Housing Administration, Farmers Home Administration, Federal National Mortgage Association, Government National Mortgage Association, Federal Home Loan Mortgage Corporation, or to any successor to the above mentioned organizations, to any other state or federal governmental or quasi-governmental organization; and (3) provided that the 1994 reenactment of this section shall not be construed to be action taken in accordance with Public Law 96-221, Section 501(b)(4). Any points or fees received in excess of those permitted under this section shall be returned to the person from whom received upon demand.

2. Notwithstanding the language in subsection 1 of this section, a lender may pay to an officer, employee or director of the lender, or to any business in which such person has an interest, bona fide fees for services actually and necessarily performed in good faith in connection with a residential real estate loan, provided:

(1) Such services are individually listed by amount and payee on the loan closing documents; and

(2) Such lender may use the preemption of Public Law 96-221, Section 501 with respect to the residential real estate loan in question. When fees charged need not be disclosed in the annual percentage rate required by Title 15, U.S.C. Sections 1601, et seq., and regulations thereunder because such fees are de minimus amounts or for other reasons, such fees need not be included in the annual percentage rate for state examination purposes.

3. The lender may charge and collect bona fide fees for services actually and necessarily performed in good faith in connection with a residential real estate loan as provided in subsection 2 of this section; however, the lender's board of directors shall determine whether such bona fide fees shall be paid to the lender or businesses related to the lender in subsection 2 of this section, but may allow current contractual relationships to continue for up to two years.

4. If any points or fees are charged, required or received, which are in excess of those permitted by this section, or which are not returned upon demand when required by this section, then the person paying the same points or fees or his or her legal representative may recover twice the amount paid together with costs of the suit and reasonable attorney's fees, provided that the action is brought within five years of such payment.

5. Any lender who knowingly violates the provisions of this section is guilty of a class B misdemeanor.
(L. 1974 2d Ex. Sess. S.B. 1, A.L. 1979 S.B. 305, A.L. 1989 H.B. 615 & 563 and S.B. 258, A.L. 1994 S.B. 701, A.L. 2000 S.B. 896, A.L. 2001 H.B. 738 merged with S.B. 186)

408.060. Defendant may plead usury - judgment, how rendered - corporations cannot enter plea of usury. - Usury may be pleaded as a defense in civil actions in the courts of this state, and upon proof that usurious interest has been paid, the same, in excess of the legal rate of interest, shall be deemed payment, shall be credited upon the principal debt, and all costs of the action shall be taxed against the party guilty of exacting usurious interest, who shall in no case recover judgment for more than the amount found due upon the principal debt, with legal interest, after deducting therefrom all payments of usurious interest made by the debtor, whether paid as commissions or

brokerage, or as payment upon the principal, or as interest on said indebtedness; provided, however, that no corporation shall, after this section takes effect, interpose the defense of usury in any such action, nor shall any bond, note, debt, contract or obligation of any corporation or any security therefor, be set aside, impaired or adjudged invalid by reason of the rate of interest which the corporation may have paid or agreed to pay hereon.
(RSMo 1939 § 3230)
Prior revisions: 1929 § 2843; 1919 § 6495; 1909 § 7183

408.070. Usurious interest - security agreement invalid. - In actions for the enforcement of liens upon personal property subjected to a security agreement to secure indebtedness, or to maintain or secure possession of property so subjected to a security agreement, or in any other case when the validity of such lien is drawn in question, proof upon the trial that the party holding or claiming to hold the lien has received or exacted usurious interest for the indebtedness shall render any security agreement of personal property, or any lien whatsoever thereon given to secure the indebtedness, invalid and illegal.
(RSMo 1939 § 3231, A.L. 1965 p. 114)
Prior revisions: 1929 § 2844; 1919 § 6496; 1909 § 7184
(1977) Lender is not precluded from showing that charge of interest in excess of legal rate was unintentional or inadvertent and without existence of intent is not usurious. Wyckoff v. Commerce Bank of Kansas City (A.), 561 S.W.2d 399.

408.080. Interest may be paid on interest - compounding limited to once a month - prohibited for certain loans. - Parties may contract, in writing, for the payment of interest upon interest; but the interest shall not be compounded more often than once a month. Where a different rate is not expressed, interest upon interest shall be at the same rate as interest on the principal debt. Loans governed by section 408.035 are not subject to the provisions of this section.
(RSMo 1939 § 3232, A.L. 1982 H.B. 1341, et al., A.L. 1992 S.B. 688)

408.081. Validity of certain existing contract not to be affected, when. - Nothing in sections 408.035, 408.036 and 408.080 shall affect the validity of any contract in existence on August 28, 1992.
(L. 1992 S.B. 688)

408.083. Credit contracts, prepayment before maturity, computation of interest. - Notwithstanding any other provision of law to the contrary, all credit contracts with interest or time price differential calculated on an add-on basis entered into after August 28, 2002, the proceeds of which are used for personal, family or household purposes, shall provide that the amount of interest or time price differential earned upon prepayment in full will be computed on the basis of the rate or rate formula originally contracted for on the actual unpaid principal balances for the time actually outstanding.
(L. 1988 S.B. 426 § 1, A.L. 2002 S.B. 895)
Effective 7-1-03

408.090. Demand loans where only securities are pledged not subject to usury laws. - Any other laws to the contrary notwithstanding, in any case in which advances of money, repayable on demand, are made solely upon securities, as defined in section 400.8-102(a) RSMo 1969, pledged as collateral for such repayment and in which such advances are used by the borrower only for the purchase of securities, as so defined, it shall be lawful to receive or to contract to receive and collect, as compensation for making such advances, any sum agreed upon by the parties to such transaction.
(L. 1974 S.B. 455 § 1)

408.092. Attorney fees, enforcement of credit agreements, limitations. - 1. Notwithstanding any other provision of law to the contrary, attorneys' fees are permitted to enforce a credit agreement provided the enforcing attorney is a licensed member of the Missouri bar or is authorized to practice law in Missouri, and such fees meet one of the following requirements:

(1) Such fees are included in the written credit agreement, and are not otherwise prohibited by law; or

(2) Such fees do not exceed fifteen percent of the outstanding credit balance in default, provided such credit was extended by a for-profit business or credit union.

2. At the court's discretion, additional fees may be awarded to the attorney for the prevailing party.

3. For the purposes of this section, a credit agreement shall have the same meaning as provided in subsection 1 of section 432.045, RSMo.

4. No provision of this section shall be construed to authorize or limit attorney's fees permitted parties and transactions not covered by this section.
(L. 1997 H.B. 257)

*** 408.095. Charging interest of more than two percent per month a misdemeanor, exceptions.** - Every person or persons, company, corporation or firm, and every agent of any person, persons, company, corporation ** or firm, who shall take or receive, or agree to take or receive, directly or indirectly, by means of commissions of brokerage charges, or otherwise, for the forbearance or use of money or other commodities, any interest at a rate greater than two percent per month, except as permitted by the laws of this state, shall be deemed guilty of a misdemeanor. Nothing herein contained shall be construed as authorizing a higher rate of interest than is now provided by law.
(RSMo 1939 § 4813, A.L. 1974 2d Ex. Sess. S.B. 1)
Prior revisions: 1929 § 4421; 1919 § 3680; 1909 § 4892
*Transferred; formerly 563.800
**Word "corporations" appears in original rolls.

408.096. Loan arrangement excess fee prohibited for certain transactions - penalty. - No person, firm or corporation shall receive or impose any fee or charge, other than one expressly provided for by statute, for arranging credit in the amount of one thousand dollars or less the proceeds of which are intended to be used by the borrower primarily for personal, family or household purposes. Any contract evidencing such excess fee or charge and any note evidencing credit so arranged is void. Any person, firm or corporation who receives or imposes a fee or charge prohibited by this section is guilty of a class B misdemeanor.
(L. 1979 S.B. 305)

INTEREST ON SMALL LOANS

408.100. Applicability of section - rate of interest. - This section shall apply to all loans which are not made as permitted by other laws of this state except that it shall not apply to loans which are secured by a lien on real estate, non-processed farm products, livestock, farm machinery or crops or to loans to corporations. On any loan subject to this section, any person, firm, or corporation may charge, contract for and receive interest on the unpaid principal balance at rates agreed to by the parties.
(L. 1951 p. 875 § 408.031, A.L. 1959 H.B. 320, A.L. 1979 S.B. 305, A.L. 1985 H.B. 358 & 440, A.L. 1998 S.B. 792)

408.105. Precomputed loans, extensions, fee, limitations. - 1. Extensions on precomputed loans made pursuant to section 408.100 shall be calculated on an actuarial basis or as follows and shall not be considered an additional charge or fee within the meaning of section 408.140:

UNIT CHARGE (UC) = Total Finance Charge / Sum of the Digits of Original Term
EXTENSION FEE = UC Times Number of Full Remaining Installments

2. The following limitations regarding extensions on precomputed loans shall apply:

(1) No extension may be taken on the first installment;

(2) No extension fee shall be collected more than one month prior to the due date of the earliest installment being deferred;

(3) No extension shall be collected for any partial payment; however, two dollars or less shall not be considered a partial payment;

(4) A minimum extension fee of one dollar will be allowed;

(5) In the event of * prepayment in full of the note or contract, the extensions shall be counted as months and computed as provided in section 408.170, based on this total, applied to all of the interest contracted for, plus the extension fees collected.
(L. 1985 S.B. 183)
*Word "of" does not appear in original rolls.

408.110. Short title - applicability of sections 408.120 to 408.190. - Sections 408.120 to 408.190 shall apply only to loans made pursuant to section 408.100, and shall be known as the "Consumer Loan Act".
(L. 1951 p. 875 § 408.032, A.L. 1981 S.B. 326, A.L. 1996 H.B. 1432)

408.120. Interest computed and paid, how. - The total interest for payment according to schedule may be added to the principal of the loan, but interest shall not be discounted or deducted from the principal of the loan, or paid or received at the time the loan is made, and shall not be compounded. Loan contracts may be calculated and repaid as follows:

(1) A loan contract may provide for repayment in consecutive monthly installments, but the first installment may be payable at any time within forty-five days from the date of the loan and no installment shall be substantially greater than any other installment. Interest for any fractional portion of a month may be computed for each elapsed day at one-thirtieth of the monthly rate contracted for.

(2) A loan contract may provide for repayment as the parties may agree; however, any such loan contract shall provide for the payment of simple interest on such loans at rates not to exceed those authorized by sections 408.100 and 408.200.
(L. 1951 p. 875 § 408.032(a), A.L. 1981 S.B. 326)

408.130. Borrower to receive statement of contract - contents - receipts for payments. - 1. At the time the loan is made, there shall be delivered to the borrower, or, if there are two or more borrowers, to one of them, a written statement or copy of the loan contract showing in clear and distinct terms:

(1) The name and address of the lender and of one of the borrowers;

(2) The date of the loan contract;

(3) The schedule of installments or description thereof;

(4) The type of any instrument securing the loan;

(5) The principal amount of the loan excluding interest;

(6) The rate or amount of interest as the contract may provide;

(7) That the borrower may prepay the loan in whole or in part at any time, and in case interest has been added to the principal of the loan;

(8) That the interest is subject to the refund requirements of section 408.170 if the loan is prepaid in full.

2. A receipt shall be given for the amount of each payment made in currency. Any note paid in full, or a copy thereof, shall be so marked "paid" and returned and any security interest which no longer secures a loan shall be restored, canceled or released.
(L. 1951 p. 875 § 408.032(b), A.L. 1965 p. 114, A.L. 1994 H.B. 963)

408.140. Additional charges or fees prohibited, exceptions--no finance charges if purchases are paid for within certain time limit, exception. - 1. No further or other charge or amount whatsoever shall be directly or indirectly charged, contracted for or received for interest, service charges or other fees as an incident to any such extension of credit except as provided and regulated by sections 367.100 to 367.200, RSMo, and except:

(1) On loans for thirty days or longer which are other than "open-end credit" as such term is defined in the federal Consumer Credit Protection Act and regulations thereunder, a fee, not to exceed five percent of the principal amount loaned not to exceed seventy-five dollars may be charged by the lender; however, no such fee shall be permitted on any extension, refinance, restructure or renewal of any such loan, unless any investigation is made on the application to extend, refinance, restructure or renew the loan;

(2) The lawful fees actually and necessarily paid out by the lender to any public officer for filing, recording, or releasing in any public office any instrument securing the loan, which fees may be collected when the loan is made or at any time thereafter; however, premiums for insurance in lieu of perfecting a security interest required by the lender may be charged if the premium does not exceed the fees which would otherwise be payable;

(3) If the contract so provides, a charge for late payment on each installment or minimum payment in default for a period of not less than fifteen days in an amount not to exceed five percent of each installment due or the minimum payment due or fifteen dollars, whichever is greater, not to exceed fifty dollars; except that, a minimum charge of ten dollars may be made. If the contract so provides, a charge for late payment on each twenty-five dollars or less installment in default for a period of not less than fifteen days shall not exceed five dollars;

(4) If the contract so provides, a charge for late payment for a single payment note in default for a period of not less than fifteen days in an amount not to exceed five percent of the payment due; provided that, the late charge for a single payment note shall not exceed fifty dollars;

(5) Charges or premiums for insurance written in connection with any loan against loss of or damage to property or against liability arising out of ownership or use of property as provided in section 367.170, RSMo; however, notwithstanding any other provision of law, with the consent of the borrower, such insurance may cover property all or part of which is pledged as security for the loan, and charges or premiums for insurance providing life, health, accident, or involuntary unemployment coverage;

(6) Charges assessed by any institution for processing a refused instrument plus a handling fee of not more than twenty-five dollars;

(7) If the contract or promissory note, signed by the borrower, provides for attorney fees, and if it is necessary to bring suit, such attorney fees may not exceed fifteen percent of the amount due and payable under such contract or promissory note, together with any court costs assessed. The attorney fees shall only be applicable where the contract or promissory note is referred for collection to an attorney, and is not handled by a salaried employee of the holder of the contract;

(8) Provided the debtor agrees in writing, the lender may collect a fee in advance for allowing the debtor to defer up to three monthly loan payments, so long as the fee is no more than the lesser of fifty dollars or ten percent of the loan payments deferred, no extensions are made until the first loan payment is collected and no more than one deferral in a twelve-month period is agreed to and collected on any one loan; this subdivision applies to nonprecomputed loans only and does not affect any other subdivision;

(9) If the open-end credit contract is tied to a transaction account in a depository institution, such account is in the institution's assets and such contract provides for loans of thirty-one days or longer which are "open-end credit", as such term is defined in the federal Consumer Credit Protection Act and regulations thereunder, the creditor may charge a credit advance fee of the lesser of twenty-five dollars or five percent of the credit advanced from time to time from the line of credit; such credit advance fee may be added to the open-end credit outstanding along with any interest, and shall not be considered the unlawful compounding of interest as that term is defined in section 408.120.

2. Other provisions of law to the contrary notwithstanding, an open-end credit contract under which a credit card is issued by a company, financial institution, savings and loan or other credit issuing company whose credit card operations are located in Missouri may charge an annual fee, provided that no finance charge shall be assessed on new purchases other than cash advances if such purchases are paid for within twenty-five days of the date of the periodic statement therefor.

3. Notwithstanding any other provision of law to the contrary, in addition to charges allowed pursuant to section 408.100, an open-end credit contract provided by a company, financial institution, savings and loan or other credit issuing company which is regulated pursuant to this chapter may charge an annual fee not to exceed fifty dollars.

(L. 1951 p. 875 § 408.032 (c), A.L. 1979 S.B. 305, A.L. 1980 H.B. 1195, A.L. 1981 S.B. 5 Revision, S.B. 326, A.L. 1984 S.B. 686, A.L. 1986 H.B. 1207, A.L. 1989 H.B. 386 merged with H.B. 615 & 563 merged with S.B. 192, A.L. 1990 H.B. 1630 merged with S.B. 768, A.L. 1992 S.B. 705 merged with S.B. 688, A.L. 1994 H.B. 1312, A.L. 1996 S.B. 683, A.L. 1998 S.B. 792, A.L. 2001 H.B. 738 merged with S.B. 186, A.L. 2002 S.B. 895, A.L. 2003 S.B. 346)

408.145. Fees for credit cards issued in contiguous states. - 1. To encourage competitive equality, lenders issuing credit cards in this state pursuant to the authority of section 408.100 or 408.200, may in addition to lawful interest, contract for, charge and collect fees for such credit cards which any lender in any contiguous state is permitted to charge for credit cards issued in such contiguous state by such state's statutes. State-chartered lenders charging such fees in reliance on this subsection shall file a copy of the pertinent statutes of one contiguous state authorizing credit card fees with the director of finance or such lender's principal state regulator. The director of finance or other principal state regulator shall, within thirty days after receipt of the filing, approve or disapprove of such fees on the sole basis of whether the statutes of such contiguous state permit such fees, and without regard to the restrictions placed upon credit cards by subsection 2 of this section. When the lender is chartered by the federal government, or any agency thereunder, or is unregulated, such lender shall file with and be approved by the Missouri attorney general under the same provision as provided a state-chartered lender.

2. **"Credit card"** as used in this section shall mean a credit device defined as such in the federal Consumer Credit Protection Act and regulations thereunder, except:

(1) The term shall be limited to credit devices which permit the holder to purchase goods and service upon presentation to third parties whether or not the credit card also permits the holder to obtain loans of any other type; and

(2) Such credit device shall only provide credit which is not secured by real or personal property.

3. **"Lender"** as used in this section shall mean any category of depository or nondepository creditor. Notwithstanding the provisions of section 408.140, the lender shall declare on each credit card contract whether the credit card fees are governed by section 408.140, or by this section.

(L. 1998 S.B. 792 and S.B. 852 & 913)
Effective 1-1-99

408.150. Lender can not receive excess interest - failure by lender to return excess interest, damages allowed. - If any amount in excess of the interest permitted by sections 408.100 to 408.190 is charged or received on any loan except as the result of a bona fide error, the lender shall be barred from recovery of any interest on the contract and shall upon demand return all interest received to the person from* whom received. If such interest is not returned upon written demand, then the person paying the same or his legal representative may recover twice the amount paid together with costs of the suit and reasonable attorney's fees, provided that the action is brought within five years of such written demand.

(L. 1951 p. 875 § 408.032(d), A.L. 1982 H.B. 1341, 1473, 1474 & 1475)
*Word "from" does not appear in original rolls.

408.160. False advertising prohibited. - No person, firm, or corporation shall print, publish, distribute or cause the same to be done in any manner whatsoever, any written or printed statement with regard to interest or charges, terms or conditions for the lending of money which is false or calculated to deceive.

(L. 1951 p. 875 § 408.032(e))

408.170. Contracts paid in full before due date - recomputations of interest - refund defined. - If a note or loan contract providing for amount of interest, added to the principal of the loan, is prepaid in full (by cash, renewal, or refinancing) one month or more before the final installment date, the lender shall either:

(1) Recompute the amount of interest earned to the date of prepayment in full on the basis of the rate of interest originally contracted for computed on the actual unpaid principal balances for the time actually outstanding; or

(2) If the initial term of the contract is sixty-one months or less and it is a contract for five thousand dollars or less, give a refund of a portion of the amount of interest originally

contracted for which shall be computed as follows: The amount of the refund shall be at least as great a proportion of such amount of interest as the sum of the full monthly balances of the contract scheduled to follow the installment date after the date of prepayment in full bears to the sum of all the monthly balances of the contract, both sums to be determined according to the payment schedule provided by the contract; except that, if prepayment in full occurs during the first installment period, interest shall be recomputed and charged only for the actual number of days elapsed. When the period before the first installment is more or less than one month, the portion of the interest earned for such period shall be determined by counting each day in such period as one-thirtieth of a month and one three hundred and sixtieth of a year.

2. No refund shall be required for any partial prepayment.

3. For a contract for more than five thousand dollars, the word "refund" as used herein shall mean a credit or deduction from the amount of interest originally contracted for at any time by cash, renewal or refinancing, the buyer shall receive a refund which shall be calculated by the actuarial method. The lender shall retain no more interest than is actually earned whenever a note or loan contract is prepaid.

(L. 1951 p. 875 § 408.032(f), A.L. 1986 H.B. 1207, A.L. 2002 S.B. 895)
Effective 7-1-03

408.175. Interest rate when maturity of note or contract accelerated. - If the maturity of a note or loan contract providing for an amount of interest added to the principal of the loan is accelerated, the unpaid balance shall be reduced by the refund of that portion of the amount of interest originally contracted for which would be required for prepayment in full on the date of acceleration, and thereafter the note or loan contract shall bear interest at the rate originally contracted for, computed on unpaid balances for the time actually outstanding from the installment date following the date of acceleration until paid.
(L. 1959 H.B. 321)

408.180. Authority of director to verify interest rates charged. - The director of finance shall have the power and duty to verify the correctness of the rate and amount of interest charged or received and the refund of interest made on any loan which is subject to section 408.100.
(L. 1951 p. 875 § 408.032(g))

408.190. Certain loans exempt from sections 408.120 to 408.180, and 408.200. - Sections 408.120 to 408.180 and 408.200 shall not apply to any loan on which the rate or amount of interest charged or received is lawful without regard to the rates permitted in section 408.100.
(L. 1951 p. 875 § 408.032(h), A.L. 1974 2d Ex. Sess. S.B. 1, A.L. 1980 H.B. 1195, A.L. 1981 S.B. 5 Revision)

408.193. Credit cards, no derogatory reports to credit agencies for carrying a zero balance. - 1. For the purposes of this section, the term **"credit card"** shall mean a credit device defined as such in the federal Consumer Credit Protection Act.

2. Any entity that issues credit cards in this state, delivers credit cards in this state or causes credit cards to be delivered in this state shall not make any derogatory report to a credit reporting agency on any credit card holder solely because such credit card holder has paid the entire outstanding balance on such credit card by the payment date.

3. Nothing herein shall authorize or prohibit an entity from suspending credit card privileges or recalling the issued credit card for any purpose.

(L. 1998 S.B. 852 & 913 § 1)
Effective 1-1-99

408.200. Borrower not to be indebted on two or more contracts with same lender, when. - No lender shall permit any borrower to be indebted to such lender on two or more contracts at any time for the purpose or with the result of contracting for or receiving more interest on the multiple notes or contracts than would have been permissible on a single note or contract entered into in accordance with section 408.100.
(L. 1951 p. 875 § 408.033, A.L. 1959 H.B. 320, A.L. 1974 2d Ex. Sess. S.B. 1, A.L. 1977 S.B. 317, A.L. 1979 S.B. 305, A.L. 1985 H.B. 358 & 440, A.L. 1998 S.B. 792)

408.210. Assignment of wages or compensation - excess over loan deemed interest. - The payment of four hundred dollars or less in money, credit, goods, or things in action, as consideration for any sale or assignment of, or order for the payment of wages, salary, commissions, or other compensation for services, whether earned or to be earned, shall for the purpose of this chapter and any act regulating loans or punishing usury be deemed a loan secured by such assignment, and the amount by which such assigned compensation exceeds the amount of such consideration actually paid shall for the

purposes of this chapter and any act regulating loans or punishing usury be deemed interest or charges upon such loan from the date of such payment to the date such compensation is payable, and such transaction shall be governed by and subject to the provisions of this chapter, provided that nothing in this section contained shall be construed as authorizing the assignment of wages, salaries, commissions, or other compensation for services not earned at the time when such purported sale or assignment thereof is made. In case any transaction defined in this section results in a greater rate or amount of interest or charges than is permitted by law, all contracts taken in connection with such transaction shall be void and the lender shall have no right to collect, receive, or retain any principal, interest or charges.
(L. 1951 p. 875 § 408.034)

SECOND MORTGAGE LOANS

408.231. Definitions. - 1. A **"second mortgage loan"** shall mean a loan secured in whole or in part by a lien upon any interest in residential real estate created by a security instrument, including a mortgage, trust deed, or other similar instrument or document, which provides for interest to be calculated at the rate allowed by the provisions of section 408.232, which residential real estate is subject to one or more prior mortgage loans.

2. **"Principal"** of a second mortgage loan means the total of the net amount paid to, receivable by, contracted for, or paid or payable for the account of the borrower, and to the extent payment is deferred, additional charges permitted by section 408.233.

3. **"Residential real estate"** shall mean any real estate used or intended to be used as a residence by not more than four families, notwithstanding the provisions of section 408.015.
(L. 1979 S.B. 305, A.L. 1980 H.B. 1195, A.L. 1981 S.B. 5 Revision, A.L. 1985 S.B. 183, A.L. 1986 S.B. 667, A.L. 1994 H.B. 1312 & S.B. 718)

408.232. Rates and terms. - 1. With respect to a second mortgage loan, any person, firm or corporation may charge, contract for, and receive interest in any manner at rates agreed to by the parties computed on unpaid balances of the principal for the time actually outstanding.

2. The term of the loan, for purposes of this section, commences with the date the loan is made. Differences in the lengths of months are disregarded, and a day may be counted as one-thirtieth of a month and one-three hundred sixtieth of a year. When a second mortgage loan contract provides for monthly installments, the first installment may be payable at any time within one month and fifteen days of the date of the loan.

3. For revolving loans, charges may be computed at a daily rate of one-thirtieth of the monthly rate on actual daily balances or at a monthly rate on the average daily balance in each monthly billing cycle.

4. Sections 408.231 to 408.241 shall not apply to any loans on which the rate of interest charged is lawful without regard to the rates permitted in subsection 1 of this section.
(L. 1979 S.B. 305, A.L. 1980 H.B. 1195, A.L. 1981 S.B. 5 Revision, A.L. 1994 H.B. 1312 & S.B. 718, A.L. 1998 S.B. 792)

408.233. Additional charges authorized. - 1. No charge other than that permitted by section 408.232 shall be directly or indirectly charged, contracted for or received in connection with any second mortgage loan, except as provided in this section:

(1) Fees and charges prescribed by law actually and necessarily paid to public officials for perfecting, releasing, or satisfying a security interest related to the second mortgage loan;

(2) Taxes;

(3) Bona fide closing costs paid to third parties, which shall include:

(a) Fees or premiums for title examination, title insurance, or similar purposes including survey;

(b) Fees for preparation of a deed, settlement statement, or other documents;

(c) Fees for notarizing deeds and other documents;

(d) Appraisal fees; and

(e) Fees for credit reports;

(4) Charges for insurance as described in subsection 2 of this section;

(5) A nonrefundable origination fee not to exceed five percent of the principal which may be used by the lender to reduce the rate on a second mortgage loan;

(6) Any amounts paid to the lender by any person, corporation or entity, other than the borrower, to reduce the rate on a second mortgage loan or to assist the borrower in qualifying for the loan;

(7) For revolving loans, an annual fee not to exceed fifty dollars may be assessed.

2. An additional charge may be made for insurance written in connection with the loan, including insurance protecting the lender against the borrower's default or other credit loss, and:

(1) For insurance against loss of or damage to property where no such coverage already exists; and

(2) For insurance providing life, accident, health or involuntary unemployment coverage.

3. The cost of any insurance shall not exceed the rates filed with the division of insurance, and the insurance shall be obtained from an insurance company duly authorized to conduct business in this state. Any person or entity making second mortgage loans, or any of its employees, may be licensed to sell insurance permitted in this section.

4. On any second mortgage loan, a default charge may be contracted for and received for any installment or minimum payment not paid in full within fifteen days of its scheduled due date equal to five percent of the amount or fifteen dollars, whichever is greater, not to exceed fifty dollars. A default charge may be collected only once on an installment or a payment due however long it remains in default. A default charge may be collected at the time it accrues or at any time thereafter and for purposes of subsection 3 of section 408.234 a default charge shall be treated as a payment. No default charge may be collected on an installment or a payment due which is paid in full within fifteen days of its scheduled due date even though an earlier installment or payment or a default charge on earlier installment or payments may not have been paid in full.

5. The lender shall, in addition to the charge authorized by subsection 4 of this section, be allowed to assess the borrower or other maker of refused instrument the actual charge made by any institution for processing the negotiable instrument, plus a handling fee of not more than twenty-five dollars; and, if the contract or promissory note, signed by the borrower, provides for attorney fees, and if it is necessary to bring suit, such attorney fees may not exceed fifteen percent of the amount due and payable under such contract or promissory note, together with any court costs assessed. The attorney fees shall only be applicable where the contract or promissory note is referred for collection to an attorney, and are not handled by a salaried employee of the holder of the contract or note.
(L. 1979 S.B. 305, A.L. 1982 H.B. 1341, et al., A.L. 1983 S.B. 70 § 408.233 merged with § 5, A.L. 1985 H.B. 826, A.L. 1986 S.B. 667 merged with H.B. 1207, A.L. 1989 S.B. 192, A.L. 1998 S.B. 792, A.L. 2003 S.B. 346)

408.234. Minimum amount of loan - collateral - prepayment rights, method of computation. - 1. No lender shall make a second mortgage loan pursuant to sections 408.231 to 408.241 in an initial principal amount of less than two thousand five hundred dollars.

2. A lender may take a security interest in any collateral in conjunction with residential real estate in connection with a second mortgage loan.

3. The borrower shall have an unconditional right to prepay any second mortgage loan. If any such loan providing for interest being added to the principal is prepaid in full one month or more before the final installment date, the lender shall recompute the amount of interest earned to the date of prepayment in full on the basis of the rate of interest originally contracted for computed on the actual unpaid principal balances for the time actually outstanding.

4. When fees charged need not be disclosed in the annual percentage rate required by Title 15, U.S.C. Sections 1601, et seq., and regulations thereunder because such fees are deminimus amounts or for other reasons, such fees need not be included in the annual percentage rate for state examination purposes

(L. 1979 S.B. 305, A.L. 1980 H.B. 1195, A.L. 1981 S.B. 5 Revision, A.L. 1994 H.B. 1312 & S.B. 718, A.L. 2000 S.B. 896)

408.235. Director may examine certain lenders. - The director of the division of finance shall have full power and authority at any time and as often as reasonably necessary to investigate and examine the books, records, and papers of any lender making second mortgage loans pursuant to this act,* and may compel the production of all relevant books, records, accounts, and documents with respect to loans made under sections 408.231 to 408.241. Provided, however, this section shall not apply to those corporations whose powers emanate from the laws of the United States and those which are subject to the divisions of credit unions and finance.

(L. 1979 S.B. 305, A.L. 1994 H.B. 1312 & S.B. 718)

*Sections 408.231 to 408.237 probably intended.

408.236. Recovery of interest barred, when, exceptions - actions taken or omitted in reliance on interpretation by division of finance, effect. - Any person violating the provisions of sections 408.231 to 408.241 shall be barred from recovery of any interest on the contract, except where such violations occurred either:

(1) As a result of an accidental and bona fide error of computation; or

(2) As a result of any acts done or omitted in reliance on a written interpretation of the provisions of sections 408.231 to 408.241 by the division of finance.

(L. 1979 S.B. 305, A.L. 1988 H.B. 1355, A.L. 1994 H.B. 1312 & S.B. 718)

408.237. Applicability of sections 408.231 to 408.241. - Sections 408.231 to 408.241 shall not apply to any transaction in which a single extension of credit is allocated between a first lien and any number of subordinate liens, for the purpose or with the result of contracting for or receiving a higher rate of interest than would have been permitted if the loan had been made under section 408.030.

(L. 1979 S.B. 305, A.L. 1994 H.B. 1312 & S.B. 718)

408.240. Penalties - actions taken or omitted in reliance on written interpretation by division, effect. - Any person, firm, or corporation who or which shall violate the provisions of sections 408.100 to 408.241 and any member, officer, director, agent or employee of such person, firm or corporation who shall participate in such violation shall be guilty of a class A misdemeanor, except where such violation occurred either:

(1) As a result of an accidental and bona fide error of computation; or

(2) As a result of any acts done or omitted in reliance on a written interpretation of sections 408.231 to 408.241 by the division of finance. Section 408.095 shall not apply to a loan which complies with sections 408.100 to 408.241.

(L. 1979 S.B. 305, A.L. 1988 H.B. 1355, A.L. 1994 H.B. 1312 & S.B. 718)

408.241. Prepayment fee, second mortgage loans, allowed when. - Notwithstanding the provisions of sections 408.233 and 408.234, a prepayment fee may be charged on second mortgage loans, as defined in section 408.231, under the same provisions as is allowed under section 408.036.

(L. 1991 H.B. 180 § 1)

RETAIL CREDIT SALES

408.250. Definitions. - Unless otherwise clearly indicated by the context, the following words when used in sections 408.250 to 408.370, for the purposes of sections 408.250 to 408.370, shall have the meanings respectively ascribed to them in this section:

(1) **"Cash sale price"** means the price stated in a retail time transaction for which the seller would have sold or furnished to the buyer, and the buyer would have bought or obtained from the seller, the goods or services which are the subject matter of the retail time transaction, if such sale were for cash. The cash sale price may include the cost of taxes, official fees, if any, and charges for accessories and their installation and delivery, and for the servicing, repairing or improving of goods. If a retail time transaction involves the repair, modernization, alteration or rehabilitation of real property, the cash sale price may include reasonable fees and costs actually to be paid for construction permits and similar fees, the services of an attorney and any title search and title insurance relating to any mortgage, lien or other security interest taken, granted or reserved pursuant to contract;

(2) **"Credit"** means the right granted by a creditor to a debtor to defer payment of a debt or to incur debt and defer its payment. It includes the right to incur debt and defer its payment pursuant to the use of a card, plate, coupon book, or other credit confirmation or identification device or number or other identifying description;

(3) The term **"creditor"** refers only to creditors who regularly extend, or arrange for the extension of, credit whether in connection with loans, sales of property or services or otherwise;

(4) **"Goods"** means all tangible chattels personal and merchandise certificates or coupons issued by a retail seller exchangeable for tangible chattels personal of such seller, but the term does not include motor vehicles, nonprocessed farm products, livestock, money, things in action, or intangible personal property. The term includes tangible chattels personal which, at the time of the sale or subsequently, are to be so affixed to realty as to become a part thereof whether or not severable therefrom;

(5) **"Holder"** of a retail time contract means the retail seller of the goods or services under the contract or, if the contract is purchased or otherwise acquired, the person purchasing or otherwise acquiring the contract;

(6) **"Insurance company"** means any form of lawfully authorized insurer in this state;

(7) **"Motor vehicle"** means any new or used automobile, motor home, motorcycle, truck, trailer, semitrailer, truck tractor, or bus, primarily designed or used to transport persons or property on a public highway, road or street, or a mobile or modular home or farm machinery or implements;

(8) **"Official fees"** means the fees prescribed by law for filing, recording or otherwise perfecting and releasing or satisfying any title or lien retained or taken by a seller in connection with a retail time transaction;

(9) **"Person"** means an individual, partnership, corporation, association, and any other group however organized;

(10) **"Principal balance"** means the cash sale price of the goods or services which are the subject matter of a retail time transaction plus the amount, if any, included in a retail time contract, if a separate identified charge is made therefor and stated in the contract, for insurance and other benefits and official fees, minus the amount of the buyer's down payment in money or goods;

(11) **"Retail buyer"** or **"buyer"** means a person who buys goods or obtains services to be used primarily for personal, family, or household purposes and not primarily for business, commercial, or agricultural purposes from a retail seller in a retail time transaction;

(12) **"Retail charge agreement"** means an agreement entered into in this state between a retail seller and a retail buyer prescribing the terms of retail time transactions to be made from time to time pursuant to such agreement, and which provides for a time charge to be computed on the buyer's total unpaid balance from time to time;

(13) **"Retail seller"** or **"seller"** means a person who regularly sells or offers to sell goods or services to a buyer primarily for the latter's personal, family, or household use and not primarily for business, commercial, or agricultural use. The term also includes a person who regularly grants credit to retail buyers for the purpose of purchasing goods or services from any person, pursuant to a retail charge agreement, but shall not apply to any person licensed or chartered and regulated to engage regularly in the business of making loans from or in this state;

(14) **"Retail time contract"** means an agreement evidencing one or more retail time transactions entered into in this state pursuant to which a buyer engages to pay in one or more deferred payments the time sale price of goods or services. The term includes a chattel mortgage; conditional sales contract; and a contract for the bailment or leasing of goods by which the bailee or lessee contracts to pay as compensation for their use a sum substantially equivalent to or in excess of their cash sale price and by which it is agreed that the bailee or lessee is bound to become, or, for no further or a merely nominal consideration has the option of becoming, the owner of the goods upon full compliance with the provisions of the contract;

(15) **"Retail time transaction"** means a contract to sell or furnish or the sale of or furnishing of goods or services by a retail seller to a retail buyer for which payment is to be made in one or more deferred payments under and pursuant to a retail time contract or a retail charge agreement;

(16) **"Services"** means work, labor and services of any kind furnished or agreed to be furnished by a retail seller but does not include professional services including, but not limited to, services performed by an accountant, physician, lawyer or the like unless the furnishing of such professional services is the subject of a signed retail time transaction;

(17) **"Time charge"** means the amount, however denominated or expressed, in excess of the cash sale price under a retail charge agreement or the principal balance under a retail time contract which a retail buyer contracts to pay or pays for goods or services. It includes the extension to the buyer of the privilege of paying therefor in one or more deferred payments;

(18) **"Time sale price"** means the total of the cash sale price of the goods or services and the amount, if any, included for insurance and other benefits if a separate identified charge is made therefor, and the amounts of the official fees, and the time charge.

(L. 1961 p. 638 § 2, A.L. 1974 S.B. 427, A.L. 1975 S.B. 71, A.L. 1979 S.B. 305, A.L. 1982 H.B. 1341, et al., A.L. 1989 H.B. 346)

408.260. Time contract, how executed – required contents - additional notes to cut off buyer's rights prohibited - waiver of buyer's legal remedies prohibited. - 1. Each retail time contract shall be in writing, shall be signed by both the buyer and the seller, and shall be completed prior to the signing of the contract by the buyer. In addition to such retail time contract, the seller may require the buyer to execute and deliver a negotiable promissory note to evidence the obligation created by the retail time contract, and the seller may require security for the payment of such obligation or the performance of any other condition of the contract, in which case the retail time contract may evidence such security. The fact that a note given to evidence a retail time contract contains the matters and things which sections 408.250 to 408.370 require be included in a retail time contract shall not render such note nonnegotiable under any of the provisions of article 3 of chapter 400, RSMo, if such note is not otherwise nonnegotiable under said chapter. Any such additional document or documents shall be completed prior to the signing thereof by the buyer. No retail time contract shall require or entail the execution by the buyer of any note or series of notes which, when separately negotiated, will cut off as to third parties any right of action or defense which the buyer may have against the seller.

2. The printed portion of the contract, other than instructions for completion, shall be in at least eight point type. The contract shall contain the following notice in a size equal to at least ten point bold type:

"NOTICE TO THE BUYER:
(1) DO NOT SIGN THIS CONTRACT BEFORE YOU READ IT OR IF IT CONTAINS ANY BLANK SPACES.
(2) YOU ARE ENTITLED TO AN EXACT COPY OF THE CONTRACT YOU SIGN.
(3) UNDER THE LAW YOU HAVE THE RIGHT TO PAY OFF IN ADVANCE THE FULL AMOUNT DUE AND UNDER CERTAIN CIRCUMSTANCES TO OBTAIN A PARTIAL REFUND OF THE TIME CHARGE."

3. The seller shall deliver to the buyer, or mail to him at his address shown on the contract, a copy of the contract signed by the seller. Until the seller does so, a buyer who has not received delivery of the goods or been furnished the services shall have the right to rescind his agreement and to receive a refund of all payments made and return of all goods traded in to the seller on account of or in contemplation of the contract, or if such goods cannot be returned, the value thereof. Any acknowledgment by the buyer of delivery of a copy of the contract shall be in a size equal to at least ten point bold type and, if contained in the contract, shall appear directly above the buyer's signature. The buyer's acknowledgment, conforming to the requirements of this subsection 3, of delivery of a copy of the contract shall be conclusive proof of such delivery, and that the contract when signed did not contain any blank spaces except as provided in subsection 7 or section 408.270, and of compliance with this section in any action or proceeding by or against a holder of the contract without knowledge to the contrary when he purchases the contract.

4. The contract shall contain the names of the seller and the buyer, the place of business of the seller, the residence of the buyer as specified by the buyer and a brief description of the goods sold or services furnished or to be furnished, and shall clearly state and describe any collateral security taken for the buyer's obligation.

5. The contract shall contain the following items:

(1) The cash sale price of the goods or services;

(2) The amount of the buyer's down payment, and whether made in money or goods, or partly in money and partly in goods, including a brief description of the goods traded in;

(3) The difference between items (1) and (2);

(4) The amount, if any, if a separate charge is made therefor, included for insurance and other benefits, specifying the types of coverage and benefits and the coverage periods and separately stating each amount for each insurance premium or benefit;

(5) The amount of official fees;

(6) The principal balance which is the sum of items (3), (4) and (5);

(7) The amount of the time charge;

(8) The amount of the time balance, which is the sum of items (6) and (7), payable in one or more deferred payments by the buyer to the seller, and the amount of each such payment and the due date or period thereof;

(9) The time sale price.

The above items need not be stated in the sequence or order set forth.

6. A retail time contract need not be contained in a single document. If the contract is contained in more than one document, then one such document may be an original document applicable to purchases of goods or services to be made by the retail buyer from time to time and in such case such document, together with the sales slip, account book or other written statement relating to each purchase, shall set forth all of the information required by this section and shall constitute the retail time contract for each such purchase.

7. No retail time contract shall be signed by any party thereto when it contains blank spaces to be filled in after it has been signed except that, if delivery of the goods is not made at the time of the execution of the contract, the identifying numbers or marks of the goods or similar information and the due dates of the payments may be inserted in the contract after its execution.

8. Upon written request from the buyer the holder of a retail time contract shall give or forward to the buyer a written statement of the dates and amounts of payments received and charges imposed and the total amount unpaid under such contract. A buyer shall be given a written receipt for any payments when made in cash.

9. No provision in a retail time contract relieving the seller from liability for any legal remedies which the buyer may have against the seller under the contract or any separate instrument executed in connection therewith shall be enforceable.

10. After payment of all sums for which the buyer is obligated under a contract and upon written demand made by the buyer the holder shall deliver or mail to the buyer at his last known address one or more good and sufficient instruments to acknowledge payment in full and shall release all security in the goods or in any collateral security.

11. No retail time contract shall contain any provision by which the buyer agrees to relieve the seller, assignee or holder of any liabilities, or whereby the buyer agrees to waive any claim, rights or legal remedies which the buyer may have against the seller, assignee or holder under the retail time contract.

(L. 1961 p. 638 § 4, A.L. 1965 p. 95, A.L. 1975 S.B. 71)

408.270. Retail time contracts negotiated by mail - delivery unnecessary - notice of insertions in blanks. - Retail time contracts negotiated and entered into by mail without personal solicitation by salesmen or other representatives of the seller and based upon the catalog of the seller or other printed solicitation of business, which is distributed and made available generally to the public, if such catalog or other printed solicitation clearly sets forth the cash and time sale prices and other terms of sales to be made through such medium, may be made as provided in this section. All provisions of sections 408.250 to 408.370 shall apply to such sales except that the seller shall not be required to deliver a copy of the contract to the buyer as provided in section 408.260 and if the contract when received by the seller contains any blank spaces the seller may insert in the appropriate blank space the amounts of money and other terms which are set forth in the seller's catalog or other printed solicitation which is then in effect. In lieu of sending the buyer a copy of the contract as provided in section 408.260, the seller shall furnish to the buyer a written statement of any items inserted in the blank spaces in the contract received from the buyer.

(L. 1961 p. 638 § 4)

408.280. Insurance purchased to secure retail time contract, regulation. - 1. The amount, if any, included for insurance, if a separate identified charge is made for the insurance, which insurance may be purchased by the seller or other person holding a retail time contract or account under a retail charge agreement, shall not exceed the applicable premium chargeable in accordance with the rates approved by the department of insurance of this state where such rates are required by law to be approved by such department. All insurance shall be written by an insurance company authorized to do business in this state and all policies written in this state shall be countersigned by a duly licensed resident agent authorized to engage in the insurance business in this state, unless otherwise provided by law. A buyer may be required to provide insurance on the goods at his own cost for the protection of the seller or other person holding a retail time contract or account under a retail charge agreement, as well as the buyer, but such insurance shall be subject to limitations provided for in regulations promulgated and issued by the director of finance pursuant to the provisions of subsection 3 of this section. An additional charge may be made for insurance written in connection with the retail time contract which provides involuntary unemployment coverage.

2. The seller or other person holding a retail time contract or account under a retail charge agreement shall, within thirty days after provision for any insurance is agreed to by the buyer, send or cause to be sent to the buyer a policy or policies or certificate or certificates of insurance, clearly setting forth the amount of the premium, the kind or kinds of insurance, the coverage and, if a policy, all the terms, exceptions, limitations, restrictions and conditions of the contract or contracts of insurance, or, if a certificate, a summary of the certificate.

3. The amount of any life insurance shall not exceed the amount of the total unpaid balance from time to time under a retail time contract or under a retail charge agreement, except that where the buyer's obligation under a retail time contract is repayable in payments which are not substantially equal in amount, such insurance may be level term insurance in an amount which shall not exceed by more than five dollars the time balance as determined under subsection 5 of section 408.260. The director of finance, or such agency or agencies as may exercise the powers and duties now performed by such director, shall issue regulations providing for and governing the types and limits of all other insurance and the issuance of policies in connection with retail time transactions. Nothing in this section shall alter or amend the statutes of this state relating to insurance or affect the powers of the director of insurance under such statutes.

4. The seller shall not decline existing insurance written by an insurance company authorized to do business in this state and the buyer shall have the privilege of purchasing insurance from an agent or broker of his own selection and of selecting his insurance company, except that the insurance company shall be acceptable to the holder, which acceptance shall not be unreasonably or arbitrarily withheld, and further, that the inclusion of the cost of the insurance premium in the retail time contract when the buyer selects his agent, broker or company shall be optional with the seller.

5. If any insurance is canceled, or the premium adjusted, any refund of the insurance premium received by the holder shall be credited to the final maturing payments of the contract except to the extent applied toward payment for similar insurance protecting the interests of the buyer and the holder or either of them.

(L. 1961 p. 638 § 5, A.L. 1989 H.B. 615 & 563)

408.290. Retail charge agreement - form - delivery to buyer - contents. - 1. Every retail charge agreement shall be in writing and shall be signed by the retail buyer. A copy of any such agreement executed on or after October 13, 1961, shall be delivered or mailed to the retail buyer by the retail seller prior to the date on which the first payment is due thereunder. An acknowledgment of the delivery thereof contained in the body of the agreement shall be conclusive proof of delivery in any action. All agreements executed on or after said date shall state the amount or rate of the time charge to be charged and paid pursuant thereto or shall state that a time charge not in excess of that permitted by law will be charged and paid pursuant thereto; and may in the event of default of any payment required by the agreement, provide for the payment of attorney fees not exceeding fifteen percent of the total unpaid balance where such balance is referred for collection to an attorney not a salaried employee of the seller and for court costs.

2. The retail seller under a retail charge agreement shall promptly supply the retail buyer under such agreement with a statement at the time of sale or as of the end of each monthly period (which need not be a calendar month) or other regular period agreed upon by the retail seller and the retail buyer in which there is any unpaid balance thereunder, which shall recite the following:

(1) The total unpaid balance under the retail charge agreement at the beginning and end of the period;

(2) Unless otherwise furnished by the retail seller to the retail buyer by sales slip, memorandum, or otherwise, a description of the goods or services purchased, the cash sale price and the date of each purchase;

(3) The payments made by the retail buyer to the retail seller and any other credits to the retail buyer during the period;

(4) The amount of the time charge, if any;

(5) A legend to the effect that the retail buyer may at any time pay his total unpaid balance.

The above items need not be stated in the sequence or order set forth.

(L. 1961 p. 638 § 6, A.L. 1975 S.B. 71)

408.300. Time charges, amount authorized on retail time contracts - retail charge agreements, time charges authorized. - 1. Notwithstanding the provisions of any other law, the seller or other holder under a retail time contract may charge, receive and collect a time charge, which shall be in lieu of any interest charges, except such as may arise under the terms of sections 408.250 to 408.370 after maturity of the time contract and which charge shall not exceed the amount agreed to by the parties to the retail time contract. The time charge under this subsection shall be computed on the principal balance of each transaction, as determined under subsection 5 of section 408.260, on contracts payable in successive monthly payments substantially equal in amount from the date of the contract to the maturity of the final payment, notwithstanding that the total time balance thereof is required to be paid in one or more deferred payments, or if goods are delivered or services performed more than ten days after that date, with the date of commencement of delivery of goods or performance of services to the maturity of the final payment. When a retail time contract provides for payment other than in substantially equal successive monthly payments, the time charge shall not exceed the amount which will provide the same return as is permitted on substantially equal monthly payment contracts. Each day may be counted as one-thirtieth of a month. In lieu of any other charge, a minimum time charge of twelve dollars may be charged, received, and collected on each such contract.

2. Notwithstanding the provisions of any other law, the seller and assignee under a retail charge agreement may charge, receive and collect a time charge which shall not exceed the amount agreed to by the parties to the retail charge agreement. The time charge under this subsection shall be computed on an amount not exceeding the greater of either:

(1) The average daily balance of the account in the billing cycle for which the charge is made, which is the sum of the amount unpaid each day during that cycle divided by the number of days in that cycle; amount unpaid on a day is determined by adding to any balance unpaid as of the beginning of that day all purchases and other debits and deducting all payments and other credits made or received as of that day; or

(2) The unpaid balance of the account on the last day of the billing cycle after first deducting all payments, credits and refunds during the billing cycle; or for all unpaid balances within a range of not in excess of ten dollars on the basis of the median amount within such range, if as so computed such time charge is applied to all unpaid balances within such range. A minimum time charge not in excess of seventy cents per month may be charged, received and collected.

3. The time charge shall include all charges incident to investigating and making any retail time transaction. No fee, expense, delinquency charge, collection charge, or other charge whatsoever, shall be charged, received, or collected except as provided in sections 408.250 to 408.370.

(L. 1961 p 638 § 7, A.L. 1975 S.B. 71, A.L. 1979 S.B. 305, A.L. 1980 H.B. 1195, A.L. 1981 S.B. 5 Revision, A.L. 1981 H.B. 256, A.L. 1985 H.B. 358 & 440, A.L. 1996 S.B. 898)

408.310. Assignments of retail time contracts and charge agreements - notice to buyer, effect. - Any person may purchase or acquire or agree to purchase or acquire from any seller any retail time contract or account under a retail charge agreement on such terms and conditions and at such price as may be agreed upon between them. Filing of the assignment, notice to the buyer of the assignment, and any requirement that the purchaser or other assignee maintain dominion over the payments or the goods if repossessed shall not be necessary to the validity of a written assignment of such a contract or account as against creditors, subsequent purchasers, pledges, mortgagees and lien claimants of the seller. Unless the buyer has notice of the assignment of his contract or account, payment thereunder made by the buyer to the seller or to the last known purchaser or other assignee of such contract or account shall be binding upon all subsequent purchasers or other assignees.

(L. 1961 p. 638 § 8)

408.320. Buyer may pay retail time contract debt before maturity - refund of charges. - Notwithstanding the provisions of any retail time contract to the contrary, any buyer may prepay in full at any time before maturity the debt of any retail time contract and on so paying such debt shall receive a refund credit thereof for such anticipation of payments. The amount of such refund shall be calculated by the actuarial method. The lender shall retain no more interest than is actually earned whenever a retail time contract is prepaid.

(L. 1961 p. 638 § 9, A.L. 1986 H.B. 1207, A.L. 2002 S.B. 895)
Effective 7-1-03

408.330. Delinquency and collection charges permitted - insurance premium in lieu of perfecting security interest authorized - attorney fees - consolidation of contracts. - 1. If a retail time contract or a retail charge agreement so provides, the holder thereof may charge and collect:

(1) A premium for insurance in lieu of charges for perfecting a security interest required by the lender if the

premium does not exceed the fees which would otherwise be payable;

(2) Charges assessed by any institution for processing a refused instrument plus a handling fee of not more than fifteen dollars;

(3) A delinquency and collection charge on each installment in default for a period of not less than ten days in an amount not to exceed ten dollars or five dollars when the monthly installment is less than twenty-five dollars; or

(4) Interest on each delinquent payment thereunder at a rate which will not exceed the highest lawful contract rate. In addition to such delinquency charge, the contract may provide for the payment of attorney fees not exceeding fifteen percent of the amount due and payable under such contract where such contract is referred for collection to an attorney not a salaried employee of the holder of the contract and for court costs.

2. The parties to a retail time contract who have entered into more than one contract at substantially different times may agree to consolidate such contracts resulting in a single schedule of payments; provided, however, that the time charge on the new unpaid balance shall not exceed the maximum specified in section 408.300.

(L. 1961 p. 638 § 10, A.L. 1975 S.B. 71, A.L. 1989 H.B. 386 and S.B. 192, A.L. 1990 H.B. 1788, A.L. 1992 S.B. 705, A.L. 1994 S.B. 718)

408.340. Applicability to prior transactions. - The provisions of sections 408.250 to 408.370 shall not apply to retail time transactions consummated prior to the effective date hereof; provided, however, that with respect to any sale made subsequent to the effective date hereof pursuant to a retail charge agreement entered into prior to the effective date hereof, the provisions of sections 408.250 to 408.370 shall apply if (1) prior to the making of such sale the seller shall have delivered or mailed to the buyer a copy of a retail charge agreement, duly executed on behalf of the seller, conforming, except for the buyer's signature, with the provisions of section 408.290, and (2) the seller thereafter complies with all the other provisions of sections 408.250 to 408.370.

(L. 1961 p. 638 § 13)

408.350. Waiver of provisions void. - Any waiver of the provisions of sections 408.250 to 408.370 shall be unenforceable and void.

(L. 1961 p. 638 § 12)

408.360. Citation of law. - Sections 408.250 to 408.370 may be cited as the "Missouri Retail Credit Sales Law".

(L. 1961 p. 638 § 1)

408.365. Acceleration clauses, repossession or confession of judgment by power of attorney, right of entry to repossess and waiver of damages from repossession provisions, prohibited. - 1. No retail time contract shall contain any provision by which in the absence of the buyer's default in the performance of any of his obligations, the seller or holder may arbitrarily and without reasonable cause accelerate the maturity of any part or all of the amount owing thereunder.

2. No retail time contract or retail charge agreement shall contain any provision by which:

(1) A power of attorney is given to confess judgment, or an assignment of wages is given;

(2) The seller or holder of the contract or other person acting on his behalf is given authority to enter upon the buyer's premises unlawfully or to commit any breach of the peace in the repossession of goods;

(3) The buyer waives any right of action against the seller or holder of the contract or other person acting on his behalf, as the buyer's agent in the collection of payments under the contract or in the repossession of goods; or

(4) The buyer executes a power of attorney appointing the seller or holder of the contract, or other person acting on his behalf, as the buyer's agent in collection of payments under the contract or in the repossession of goods.

(L. 1975 S.B. 71)

408.370. Violation, penalty - effect on time and other charges - correction. - 1. Any person who shall knowingly violate any provision of section 408.250 and sections 408.260 to 408.370 shall be deemed guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not more than five hundred dollars or by imprisonment for not more than six months or both.

2. Any person violating sections 408.260 to and including 408.330, except as the result of an accidental and bona fide error of computation, shall be barred from recovery of any time charge, delinquency or collection charge on the contract.

3. Notwithstanding the other provisions of this section, the failure to comply with any provision of section 408.250 and sections 408.260 to 408.370 with respect to any retail time transaction may be corrected by the seller, or other person holding the retail time contract or account under a retail charge agreement, at any time after the execution thereof, but in any event not later than ten days after such person shall have been notified thereof in writing by the buyer, and, if so corrected, such person shall not be subject to any criminal penalty, civil forfeiture, or private cause of action under sections 408.250 to 408.370 for such failure.

4. Any buyer, who suffers an ascertainable loss of money or property, real or personal, as a result of the use or employment of any method, act or practice in violation of section 408.250 and sections 408.260 to 408.370, which is not restored by action taken pursuant to subsection 3 of this section, may bring a private cause of action pursuant to section 407.025, RSMo.

5. No private action for the recovery of damages under the provisions of subsection 4 of this section shall be commenced after three years from the date of the last method, act, or practice in violation of sections 408.250 to 408.260, 408.290, 408.300, 408.330, 408.365 and 408.370. The limitation on the commencement of action provided in this subsection shall be tolled for the same reason and in the same manner as other limitations on the bringing of actions under the provisions of chapter 516, RSMo.

(L. 1961 p. 638 § 11, A.L. 1975 S.B. 71)

408.375. Retail installment agreement, deemed signed or accepted, when. - As used in sections 408.250 to 408.370, a retail installment agreement shall be deemed to be signed or accepted by the buyer, if after a request for a retail installment account, the agreement or application for a retail installment account is in fact signed by the buyer, or if the retail installment account is used by the buyer, or if the retail installment account is used by another person authorized by the buyer to use it.

(L. 1998 H.B. 1189 § 1)

BUYER'S DEFENSES AGAINST HOLDER OF CREDIT INSTRUMENT

408.400. Definitions. - 1. As used in sections 408.400 to 408.415, unless the context otherwise requires:

(1) **"Arranged"** means to provide or offer to provide a loan which is or will be extended by another person under a business or other relationship pursuant to which the person arranging such loan receives or will receive a fee, compensation, or other consideration for such service or has knowledge of the terms of the loan and participates in the preparation of the instruments required in connection with the extension of the loan;

(2) **"Consumer goods or services"** means goods or services for use primarily for personal, family or household purposes.

2. The definitions in Articles 1, 3 and 9 of chapter 400, RSMo, are applicable to sections 408.400 to 408.415.

(L. 1974 H.B. 1047, 1110 & 1212 § 1, A.L. 1983 H.B. 713 Revision)

408.405. Defenses or setoffs arising from transaction good against holder of security instrument, when. - The rights of a holder or assignee of an instrument, account, contract, right, chattel paper or other writing other than a check or draft, which evidences the obligation of a natural person as buyer, lessee, or borrower in connection with the purchase or lease of consumer goods or services, are subject to all defenses and setoffs of the debtor arising from or out of such sale or lease, notwithstanding any agreement to the contrary, only as to amounts then owing and as a matter of defense to or setoff against a claim by the holder or assignee; provided, however, with respect to goods only, the rights of the debtor under this section may be asserted to the seller at the address at which he did business at the time of the sale and must be so asserted within ninety days after receipt of the goods.

(L. 1974 H.B. 1047, 1110 & 1212 § 2)

(1986) Home improvements held to be "consumer goods" within the meaning of this section. Roosevelt Federal Savings & Loan Ass'n v. Crider, 722 S.W.2d 325 (Mo.App.1986).

408.410. Exempt transactions. - Sections 408.400 to 408.415 are not applicable to:

(1) An instrument or other writing which evidences a loan or indebtedness to a lender or person, other than a seller or lessor, which was not arranged by a seller or lessor, the proceeds of which are used by the buyer or lessee to satisfy an obligation to a seller or lessor;

(2) Credit card sales on a credit card issued by an issuer other than the seller.

(L. 1974 H.B. 1047, 1110 & 1212 § 3)

408.415. Chapter 400, RSMo, is modified by provisions of sections 408.400 to 408.415. - Subject to the provisions of sections 408.400 to 408.415, the provisions of chapter 400, RSMo 1969, shall be applicable to any consumer credit transaction.

(L. 1974 H.B. 1047, 1110 & 1212 § 4)

VARIABLE RATE OF INTEREST CERTAIN LOANS

408.455. Variable rate agreements subject to certain provisions. - All contracts or agreements originally subject to sections 408.450 to 408.470, existing on August 28, 2003, shall remain subject to the provisions of sections 408.140, 408.150, 408.160 and 408.550 to 408.562, even if the contract or agreement is converted into another form of credit.

(L. 1984 H.B. 1170, A.L. 2003 H.B. 221 merged with S.B. 346)

LENDERS OF UNSECURED LOANS UNDER FIVE HUNDRED DOLLARS

408.500. Unsecured loans under five hundred dollars, licensure of lenders, interest rates and fees allowed - penalties for violations - cost of collection expenses - notice required, form. 1. Lenders, other than banks, trust companies, credit unions, savings banks and savings and loan companies, in the business of making unsecured loans of five hundred dollars or less shall obtain a license from the director of the division of finance. An annual license fee of three hundred dollars per location shall be required. The license year shall commence on January first each year and the license fee may be prorated for expired months. The director may establish a biennial licensing arrangement but in no case shall the fees be payable for more than one year at a time. The provisions of this section shall not apply to pawnbroker loans, consumer credit loans as authorized under chapter 367, RSMo, nor to a check accepted and deposited or cashed by the payee business on the same or the following business day. The disclosures required by the federal Truth in Lending Act and regulation Z shall be provided on any loan, renewal or extension made pursuant to this section and the loan, renewal or extension documents shall be signed by the borrower.

2. Entities making loans pursuant to this section shall contract for and receive simple interest and fees in accordance with sections 408.100 and 408.140. Any contract evidencing any fee or charge of any kind whatsoever, except for bona fide clerical errors, in violation of this section shall be void. Any person, firm or corporation who receives or imposes a fee or charge in violation of this section shall be guilty of a class A misdemeanor.

3. Notwithstanding any other law to the contrary, cost of collection expenses, which include court costs and reasonable attorneys fees, awarded by the court in suit to recover on a bad check or breach of contract shall not be considered as a fee or charge for purposes of this section.

4. Lenders licensed pursuant to this section shall conspicuously post in the lobby of the office, in at least fourteen-point bold type, the maximum annual percentage rates such licensee is currently charging and the statement: NOTICE:

This lender offers short-term loans. Please read and understand the terms of the loan agreement before signing.

5. The lender shall provide the borrower with a notice in substantially the following form set forth in at least ten-point bold type, and receipt thereof shall be acknowledged by signature of the borrower:

(1) This lender offers short-term loans. Please read and understand the terms of the loan agreement before signing.

(2) You may cancel this loan without costs by returning the full principal balance to the lender by the close of the lender's next full business day.

6. The lender shall renew the loan upon the borrower's written request and the payment of any interest and fees due at the time of such renewal; however, upon the first renewal of the loan agreement, and each subsequent renewal thereafter, the borrower shall reduce the principal amount of the loan by not less

than five percent of the original amount of the loan until such loan is paid in full. However, no loan may be renewed more than six times.

7. When making or negotiating loans, a licensee shall consider the financial ability of the borrower to reasonably repay the loan in the time and manner specified in the loan contract. All records shall be retained at least two years.

8. A licensee who ceases business pursuant to this section must notify the director to request an examination of all records within ten business days prior to cessation. All records must be retained at least two years.

9. Any lender licensed pursuant to this section who fails, refuses or neglects to comply with the provisions of this section, or any laws relating to consumer loans or commits any criminal act may have its license suspended or revoked by the director of finance after a hearing before the director on an order of the director to show cause why such order of suspension or revocation should not be entered specifying the grounds therefor which shall be served on the licensee at least ten days prior to the hearing.

10. Whenever it shall appear to the director that any lender licensed pursuant to this section is failing, refusing or neglecting to make a good faith effort to comply with the provisions of this section, or any laws relating to consumer loans, the director may issue an order to cease and desist which order may be enforceable by a civil penalty of not more than one thousand dollars per day for each day that the neglect, failure or refusal shall continue. The penalty shall be assessed and collected by the director. In determining the amount of the penalty, the director shall take into account the appropriateness of the penalty with respect to the gravity of the violation, the history of previous violations, and such other matters as justice may require.

(L. 1990 H.B. 961, A.L. 1998 H.B. 1189, A.L. 2001 H.B. 738 merged with S.B. 186, A.L. 2002 S.B. 884, A.L. 2003 S.B. 346)

408.505. Term of loans, charges permitted, repayment, return check charge. - 1. This section shall apply to:

(1) Unsecured loans made by lenders licensed or who should have been licensed pursuant to section 408.500;

(2) Any person that the Missouri division of finance determines that has entered into a transaction that, in substance, is a disguised loan; and

(3) Any person that the Missouri division of finance determines has engaged in subterfuge for the purpose of avoiding the provisions of this section.

2. All loans made pursuant to this section and section 408.500, shall have a minimum term of fourteen days and a maximum term of thirty-one days, regardless of whether the loan is an original loan or renewed loan.

3. A lender may only charge simple interest and fees in accordance with sections 408.100 and 408.140. No other charges of any nature shall be permitted except as provided by this section, including any charges for cashing the loan proceeds if they are given in check form. However, no borrower shall be required to pay a total amount of accumulated interest and fees in excess of seventy-five percent of the initial loan amount on any single loan authorized pursuant to this section for the entire term of that loan and all renewals authorized by section 408.500 and this section.

4. A loan made pursuant to the provisions of section 408.500 and this section shall be deemed completed and shall not be considered a renewed loan when the lender presents the instrument for payment or the payee redeems the instrument by paying the full amount of the instrument to the lender. Once the payee has completed the loan, the payee may enter into a new loan with a lender.

5. Except as provided in subsection 3 of this section, no loan made pursuant to this section shall be repaid by the proceeds of another loan made by the same lender or any person or entity affiliated with the lender. A lender, person or entity affiliated with the lender shall not have more than five hundred dollars in loans made pursuant to section 408.500 and this section outstanding to the same borrower at any one time. A lender complies with this subsection if:

(1) The consumer certifies in writing that the consumer does not have any outstanding small loans with the lender which in the aggregate exceeds five hundred dollars, and is not repaying the loan with the proceeds of another loan made by the same lender; and

(2) The lender does not know, or have reason to believe, that the consumer's written certification is false.

6. On a consumer loan transaction where cash is advanced in exchange for a personal check, a return check charge may be charged in the amounts provided by sections 408.653 and 408.654, as applicable.

7. No state or public employee or official, including a judge of any court of this state, shall enforce the provisions of any contract for payment of money subject to this section which violates the provisions of section 408.500 and this section.

8. A person does not commit the crime of passing a bad check pursuant to section 570.120, RSMo, if at the time the payee accepts a check or similar sight order for the payment of money, he or she does so with the understanding that the payee will not present it for payment until later and the payee knows or has reason to believe that there are insufficient funds on deposit with the drawee at the time of acceptance. However, this section shall not apply if the person's account on which the instrument was written was closed by the consumer before the agreed-upon date of negotiation or the consumer has stopped payment on the check.

9. A lender shall not use a device or agreement that would have the effect of charging or collecting more fees, charges, or interest than allowed by this section, including, but not limited to:

(1) Entering into a different type of transaction;

(2) Entering into a sales lease back arrangement;

(3) Catalog sales;

(4) Entering into any other transaction with the consumer that is designed to evade the applicability of this section.

10. The provisions of this section shall only apply to entities subject to the provisions of section 408.500 and this section.

(L. 2002 S.B. 884)

408.506. Report to the general assembly, contents. - The division of finance shall report to the general assembly beginning on January 1, 2003, and on the first day of January every other year thereafter, the number of licenses issued by the director pursuant to section 408.500, the number of loans issued by said lenders, the average face value of such loans, the average number of times said loans are renewed, the number of said loans that are defaulted on an annual basis, and the number and nature of complaints made to the director by customers on such licensees and the disposition of such complaints. Such report shall also include the average interest and fees charged and collected by lenders on such loans, and a comparison of such with similar small loan lenders from adjoining states.

(L. 2002 S.B. 884)

408.510. Licensure of consumer installment lenders - interest and fees allowed. - Notwithstanding any other law to the contrary, the phrase "consumer installment loans" means secured or unsecured loans of any amount and payable in not less than four substantially equal installments over a period of not less than one hundred twenty days. The phrase

"consumer installment lender" means a person licensed to make consumer installment loans. A consumer installment lender shall be licensed in the same manner and upon the same terms as a lender making consumer credit loans. Such consumer installment lenders shall contract for and receive interest and fees in accordance with sections 408.100, 408.140, and 408.170. Consumer installment lenders shall be subject to the provisions of sections 408.551 to 408.562.
(L. 2001 S.B. 186, A.L. 2002 S.B. 895)

LOAN DISCRIMINATION

408.550. Discrimination prohibited - damages recoverable. - 1. No person, upon proper application, shall be denied credit under the provisions of sections 408.015 to 408.562 on the basis of sex, marital status, age, race or religion. Any action which complies with the provisions of the Equal Credit Opportunity Act, Public Law 93-495 (15 USC 1691 et seq.), and rules and regulations promulgated thereto shall be deemed to be in compliance with this section. Any borrower discriminated against on any of these prohibited bases may recover five hundred dollars or actual damages, whichever is greater, court costs and attorney's fees.

2. No person shall be denied credit under the provisions of sections 408.015 to 408.562 because of any exercise of his rights under law.
(L. 1979 S.B. 305)

DEFAULTS

408.551. Applicability of sections 408.551 to 408.562 - credit transaction defined. - Sections 408.551 to 408.562 shall apply to any credit transaction made primarily for personal, family or household purposes pursuant to sections 365.010 to 365.160, RSMo, and sections 408.100 to 408.370. For the purposes of this section, unless the context requires otherwise, **"credit transaction"** shall mean any retail installment transaction as defined by section 365.020, RSMo, or any loan subject to section 408.100 or any second mortgage loan as defined by section 408.231 or any retail time transaction as defined in section 408.250.
(L. 1979 S.B. 305, A.L. 1984 H.B. 1170, A.L. 1998 S.B. 792)

408.552. Enforceability of default provisions. - An agreement of the parties to a credit transaction concerning default by the borrower is enforceable only to the extent that:

(1) The borrower fails to make a payment as required by agreement; or

(2) The lender's prospect of payment, performance, or ability to realize upon the collateral is significantly impaired; the burden of establishing significant impairment is on the lender.
(L. 1979 S.B. 305)

408.553. Recovery limitation. - Upon default the lender shall be entitled to recover no more than the amount which the borrower would have been required to pay upon prepayment of the obligation on the date of final judgment together with interest thereafter at the simple interest equivalent of the rate provided in the contract.
(L. 1979 S.B. 305)

408.554. Notice of default, contents, form, delivery. - 1. After a borrower has been in default for ten days for failure to make a required payment and has not voluntarily surrendered possession of the collateral, a lender may give the borrower and all cosigners on the credit transaction the notice described in this section. A lender gives notice to the borrower and cosigners under this section when he delivers the notice to the borrower or cosigner or mails the notice to him at his last known address.

2. Except as provided in subsection 4 of this section, the notice shall be in writing and conspicuously state: The name, address and telephone number of the lender to whom payment is to be made, a brief identification of the credit transaction, the borrower's right to cure the default, and the amount of payment and date by which payment must be made to cure the default. A notice in substantially the following form complies with this subsection:

(name, address, and telephone number of lender)

(account number, if any)

(brief identification of credit transaction)

(amount) is the AMOUNT NOW DUE

(date) is the LAST DAY FOR PAYMENT

You are late in making your payment(s). If you pay the AMOUNT NOW DUE (above) by the LAST DAY FOR PAYMENT (above), you may continue with the contract as though you were not late. If you do not pay by that date, we may exercise our rights under the law.

3. If the loan transaction is an insurance premium loan, the notice shall conform to the requirements of subsection 2 of this section and a notice in substantially the form specified in that subsection complies with this subsection, except for the following:

(1) In lieu of a brief identification of the loan transaction, the notice shall identify the transaction as an insurance premium loan and each insurance policy or contract that may be canceled;

(2) In lieu of the statement in the form of notice specified in subsection 2 of this section that the lender may exercise his rights under the law, the statement that each policy or contract identified in the notice may be canceled; and

(3) The last paragraph of the form of notice specified in subsection 2 of this section shall be omitted.

4. If a credit transaction is secured, the notice described in this section shall further state the following: "If you voluntarily surrender possession of the following specified collateral, you could still owe additional money after the money received from the sale of the collateral is deducted from the total amount you owe."

5. In the case of a second default on the same loan made pursuant to section 408.100 or on the same retail time transaction as defined in section 408.250 or in the case of a third default on the same second mortgage loan as defined in section 408.231, the notice described in subsection 2 of this section shall indicate that in the case of further default, the borrower will have no right to cure.
(L. 1979 S.B. 305, A.L. 1992 S.B. 705)

408.555. Acceleration, repossession and cancellation restricted - required procedures - borrower's right to cure - penalty. - 1. Except as provided in subsection 2 of this section, after a default consisting only of the borrower's failure to make a required payment, a lender, because of that default , may neither accelerate maturity of the unpaid balance nor take possession of or otherwise enforce a security interest until twenty days after a notice of the borrower's right to cure is given both to the borrower and to all cosigners on the credit transaction nor, with respect to an insurance premium loan, give notice of cancellation until thirteen days after a notice of the borrower's right to cure is given; notice shall not be given prior to default. Until expiration of the minimum applicable period after the notice is given, the borrower or cosigner may cure all defaults consisting of a failure to make the required payment by tendering the amount of all unpaid sums due at the time of the tender, without acceleration, plus any unpaid delinquency or deferral charges. Cure restores the borrower to his rights as though the default had not occurred.

2. This section does not prohibit a borrower from voluntarily surrendering possession of property which is collateral and the lender from thereafter accelerating maturity of the loan and enforcing the note or loan and his security interest in the property at any time after default. If the lender has not already given the notice described in subsection 2 or 3 of section 408.554, he shall upon voluntary surrender of the collateral notify the borrower either personally or by mail at the borrower's last known address that he may owe additional money after the money received from the sale of the collateral is deducted from the total amount owed.

3. No lender is bound by the provisions of subsection 1 of this section if default by the same borrower in connection with the same credit transaction with the same lender has occurred twice notwithstanding the cure of such defaults except as provided in subsection 4 of this section.

4. Default by a borrower on a second mortgage loan may be cured by tendering the current obligation of the borrower at any time prior to the completion of the judicial or extrajudicial proceedings for foreclosure upon such real estate. For the purposes of this section, **"current obligation of the debtor"** means the aggregate of all installments scheduled to be due at the time of the tender, notwithstanding any contractual provision for the acceleration of installment payments. A lender may take no steps to enforce a security interest in real property pursuant to a second mortgage loan until thirty days after notice of the borrower's right to cure is given; notice shall not be given prior to default. Cure restores the borrower's rights under the agreement as though the default had not occurred, and any foreclosure in violation of this section is a class B misdemeanor. This section shall not affect the debtor's right otherwise to redeem such real property under any other provision of law.
(L. 1979 S.B. 305, A.L. 1983 S.B. 70, A.L. 1992 S.B. 705)

408.556. Actions arising from default, contents of petition - default judgment requires sworn testimony - recovery of unpaid balances. - 1. In any action brought by a lender against a borrower arising from default, the petition shall allege the facts of the borrower's default, facts sufficient to show compliance with the provisions of sections 400.9-601 to 400.9-629, RSMo, which provisions are hereby deemed applicable to all credit transactions, with respect to any sale or other disposition of collateral for the credit transaction, the amount to which the lender is entitled, and an indication of how that amount was determined.

2. A default judgment may not be entered in the action in favor of the lender unless the petition is verified by the lender, or sworn testimony, by affidavit or otherwise, is adduced showing that the lender is entitled to the relief demanded.

3. If a lender takes possession or voluntarily accepts surrender of goods in which the lender has a purchase money security interest to secure a credit transaction in the principal amount of less than five hundred dollars, the borrower is not liable to the lender for the unpaid balance.

4. Following any disposition of collateral pursuant to the provisions of sections 400.9-601 to 400.9-629, RSMo, the lender shall be entitled to recover from the borrower the deficiency, if any, only if the amount financed in the transaction was more than five hundred dollars and the amount remaining unpaid at the time of default is three hundred dollars or more.
(L. 1979 S.B. 305, A.L. 1983 S.B. 70 , A.L. 2002 S.B. 895)

408.557. Notice required before deficiency action may be commenced - contents, delivery. - When a lender sells or otherwise disposes of collateral in a transaction in which an action for a deficiency may be commenced against the borrower, prior to bringing any such action or upon written request of the borrower, the lender shall give the borrower the notice provided in section 400.9-614, RSMo, for consumer goods transactions or section 400.9- 613, RSMo, for all other transactions that are not consumer goods transactions.
(L. 1979 S.B. 305, A.L. 2002 S.B. 895)

408.558. Security interest not to be taken, when. - 1. No security interest, other than a purchase money security interest, may be taken or acquired in household furnishings, appliances, or clothing of the borrower or his dependents as security for a loan if the amount financed is less than five hundred dollars.

2. No security interest may be taken or acquired in goods as security for a credit transaction in the principal amount of less than one hundred fifty dollars.
(L. 1979 S.B. 305)

408.560. Unenforceable provisions in note or credit contract. - The following provisions when contained in any note or credit contract or the contract of any guarantor of a credit transaction shall be void and unenforceable:

(1) A power of attorney to confess judgment;

(2) An assignment of wages;

(3) A waiver or limitation of any exemption given by law to the borrower exempting the borrower's property from attachment or execution, except insofar as the waiver or limitation applies to property in which the lender has been granted a security interest to secure the credit transaction;

(4) A security interest in consumer goods which are identified only as a general class of goods, such as "household goods" or "furniture"; and

(5) A waiver of any right of action against the lender or his assignee or other person acting on behalf of the lender in the collection of payments under the contract or in the repossession of goods.
(L. 1979 S.B. 305)

408.562. Damages recoverable for violation. - In addition to any other civil remedies or penalties provided for by law, any person who suffers any loss of money or property as a result of any act, method or practice in violation of the provisions of sections 408.100 to 408.561 may bring an action in the circuit court of the county in which any of the defendants reside, in which the plaintiff resides, or in which the transaction complained of occurred to recover actual damages. The court may, in its discretion, award punitive damages and may award to the

prevailing party in such action attorney's fees, based on the amount of time reasonably expended, and may provide such equitable relief as it deems necessary and proper.
(L. 1979 S.B. 305)

RESIDENTIAL REAL ESTATE LOANS

408.570. Definitions. - Unless otherwise clearly indicated by the context, the following words and terms as used in sections 408.570 to 408.600 shall mean:

(1) **"Department"**, the Missouri department of economic development.

(2) **"Director"**, the director of the department of economic development.

(3) **"Division director"**, the appropriate director of the division of finance or the division of credit unions of the department of economic development.

(4) **"Financial institution"**, a bank, savings and loan association, credit union, consumer credit lender, mortgage banker, or any other association or institution which:

(a) Operates a place of business in Missouri; and

(b) As part of its business, makes residential real estate loans;

(5) **"Residential real estate"**, any real estate used or intended to be used as a residence by not more than four families;

(6) **"Residential real estate loan"**, a loan made for the acquisition, construction, repair, rehabilitation or remodeling of residential real estate or any loan secured by residential real estate. The term shall include any loan made to refinance or prepay in full or in part any such loan;

(7) **"State financial institution"**, any financial institution other than a national banking association, a federal savings and loan association, and a federal credit union;

(8) **"Type"** of residential real estate loan, conventional loans, construction loans, loans insured by the Federal Housing Administration, loans guaranteed by the Veteran's Administration, home improvement loans.
(L. 1979 S.B. 305, A.L. 1994 H.B. 1165)
Effective 7-6-94

408.575. Denial of loans prohibited, when, reasons for. - It shall be unlawful for any financial institution, or any subsidiary or agent thereof, to deny a residential real estate loan to a person because of any of the following factors or to discriminate against any applicant for a residential real estate loan with respect to any aspect of the loan transaction because of any of the following factors:

(1) The race, color, religion, national origin, handicap, age, marital status, or sex, of the applicant or the race, religion or national origin of persons living in the vicinity of the residential real estate;

(2) The specific geographic location of the residential real estate in such financial institution's local community as defined by it pursuant to the Community Reinvestment Act (12 U.S.C. 2901 et seq.) and the rules and regulations promulgated thereunder. Any state financial institution not regulated by the Community Reinvestment Act shall, subject to the approval of the appropriate division director, delineate its local community for the purposes of this section and shall make such delineation available to the public upon request at each office where the financial institution accepts applications for residential real estate loans;

(3) The age of the residential real estate or the age of structures in the immediate vicinity of the residential real estate.
(L. 1979 S.B. 305)

408.580. Applications to be accepted - written reasons for rejection required - display of statute required - retention of records - regulations authorized, suspension, reinstatement. - 1. No state financial institution shall refuse to provide, upon request, an application form or refuse to accept or otherwise impede the making of a written application for a residential real estate loan.

2. On receipt of a written application for a loan, every state financial institution shall provide the applicant with a written statement of the amount and purpose of each charge of the institution for the processing of the application.

3. On receipt of an amount required by the state financial institution for processing of the loan, said institution shall cause the application to be processed to final determination. If the application is rejected, said institution shall state in writing to the applicant its reason or reasons for such rejection.

4. In the event that a state financial institution, at any time, is not originating or purchasing residential real estate loans of the type for which application is made other than to meet commitments not made in violation of the provisions of sections 408.570 to 408.600 previously made for such loans, that institution may satisfy the requirements of subsections 1, 2, and 3 of this section by delivering to each prospective applicant for such loan a written statement to that effect signed by a representative of the institution.

5. Every state financial institution shall prominently display in the lobby of each of its offices, a statement of the language of subsections 1, 2, 3, and 4 of this section and a statement that the annual report of the division director made in accordance with the provisions of section 408.590 is available at the division office, on a form approved by the division director who regulates such institution.

6. Every state financial institution shall maintain a copy of each document received or delivered under the provisions of subsections 1, 2, 3, and 4 of this section for a period of not less than twenty-five months which period may be extended by order of the division director who regulates such institution. Applications for which the processing fee is not tendered or which are rejected by a state financial institution shall be segregated in the records of the institution and shall be maintained with a copy of each document originated, received or delivered regarding such application.

7. Documents required to be received, maintained or delivered by subsections 1, 2, 3, and 4 of this section may be on a form provided by the state financial institution subject to the disapproval of the division director who regulates such institution provided that each division director shall to the extent possible authorize documents otherwise required by law to be used to effect the purposes of this section.

8. A state financial institution which maintains one or more full service permanent offices in any county or city not within a county for the receipt of deposits shall accept for processing loan applications in at least one office within such county or city not within a county.

9. The division director regulating such state financial institution may issue such regulations as are necessary to carry out the purposes of this section. No rule or portion of a rule promulgated under the authority of this chapter shall become effective unless it has been promulgated pursuant to the provisions of section 536.024, RSMo.
(L. 1979 S.B. 305, A.L. 1994 H.B. 1165, A.L. 1995 S.B. 3

408.585. Limitation on requirements of sections 408.570 to 408.600. - 1. No provision of sections 408.570 to 408.600 shall be construed to require any financial institution to make any residential real estate loan contrary to sound underwriting practices which shall include but not be limited to the following:

(1) The credit worthiness of the applicant; and

(2) The market value of the residential real estate proposed as security for the loans.

2. A financial institution may employ different loan application procedures for loans to purchase or construct new dwellings as opposed to the purchase of previously occupied dwellings.

(L. 1979 S.B. 305)

408.590. Division directors to make determinations - regulations authorized - annual reports required, contents. - 1. Each division director shall cause each state financial institution which he supervises, licenses or charters and which has an office within a county or a city, such county or city having a population in excess of two hundred fifty thousand, to be examined periodically during which examination the following shall be determined:

(1) The number and total dollar amount of residential real estate loans originated, purchased, or foreclosed by the financial institution after January 1, 1980, in each of the following categories:

(a) Loans secured by residential real estate located outside the state of Missouri other than in counties contiguous to the state of Missouri;

(b) Loans secured by residential real estate located in the state of Missouri or in the counties of other states which counties are contiguous to the border of the state of Missouri, which number and dollar amount shall be further reported by the county in which the property is located;

(2) The number of residential real estate loan applications denied by the institution in which the real estate which was to secure the loan is situated in a county or city with a population in excess of two hundred and fifty thousand by such county or city;

(3) By a method to be determined by each division director, such facts as will enable the division director to conclude whether or not the institution has engaged or is engaged in any practice in violation of sections 408.570 to 408.600.

2. Each division director may issue such regulations as are necessary to require the maintenance of records from which the conclusions required by this section can be determined.

3. Each division director shall report annually to the governor and the director of the department his findings made in accordance with the provisions of this section and which shall include information reported under the provisions of the Federal Home Mortgage Disclosure Act (12 U.S.C. 2801 et seq.), which findings shall be made as to the total industry he regulates, and by each county or city with a population in excess of two hundred fifty thousand. This report shall be maintained by the division as a public document for a period of five years.

4. The annual reports of the division directors shall state the method or methods used by the division director to reach his conclusions both in examination and analysis; and shall contain such facts as he deems necessary to support those conclusions, including but not limited to:

(1) The information required to be obtained by the provisions of subsection 1 of this section;

(2) The number and type of violations of sections 408.570* to 408.600 which are found to have occurred, a statement of the action or actions taken to enforce the provisions of said sections, and the names of the financial institutions which have been found upon a hearing to have violated the provisions of said sections.

(3) The number and nature of all complaints received by the department or division regarding alleged violations of any provision of sections 408.570 to 408.600 and the action taken on each complaint by the division.

(L. 1979 S.B. 305)

*Original rolls contain section number 409.570

408.592. Nonsupervised financial institutions to report - contents of report - duties of director of division of finance. - 1. Each state financial institution which is not supervised, licensed or chartered by a division director, which operates or has a place of business within a county having a population in excess of two hundred fifty thousand or a city not within a county and which originated an aggregate of five hundred thousand dollars or more in residential real estate loans in Missouri during the last calendar year shall, on or before a date of ninety days after the end of the fiscal year of the institution, file with the director of the division of finance an annual statement for each such county or city showing separately the number and total dollar amount of residential real estate loans both within and outside of that county or city which were:

(1) Originated by that institution during the preceding fiscal year;

(2) Purchased by that institution during the preceding fiscal year; and

(3) Foreclosed by that institution during the preceding fiscal year.

2. The information required to be filed under subsection 1 of this section shall be further itemized in order to clearly and conspicuously disclose the following:

(1) The number and dollar amount of each item by census tracts for residential real estate loans on property located within that county or city;

(2) The number and dollar amount of each item for all residential real estate loans on property located outside that county or city.

3. The information required to be filed under subdivisions (1) and (2) of subsection 1 shall also be itemized in order to clearly and conspicuously disclose the following:

(1) The number and dollar amount of loans made for the purchase of residential real estate which are insured under Title II of the National Housing Act or under Title V of the Housing Act of 1949 or which are guaranteed under Chapter 37 of Title 38, United States Code;

(2) The number and dollar amount of loans made for the purchase of residential real estate, including loans insured under federal housing insurance programs;

(3) The number and dollar amount of loans made for the repair, rehabilitation or remodeling of residential real estate.

4. Each statement filed under the provisions of this section shall be filed on forms approved or furnished by the director of the division of finance and shall be verified by two officers of the institution. Wherever possible, the director of the division of finance shall make the forms consistent with the disclosure forms required under the Federal Home Mortgage Disclosure Act of 1975 (12 U.S.C. 2801 et seq.).

5. The director of the division of finance shall maintain the statements filed under the provisions of this section for a period of not less than five years and shall make the statements available to the public for inspection during regular business hours and for copying at a cost not to exceed the actual cost to the division.

(L. 1979 S.B. 305)

408.595. Financial institutions to make other annual report, contents. - Not later than sixty days following the

close of each fiscal year, every state financial institution which accepts savings deposits shall certify to the appropriate division director the total savings deposits of the institution accepted by the institution in the state of Missouri as of the close of the fiscal year, and the total amount of the institution's investments in loans, other than loans originated in the state of Missouri and in negotiable instruments other than loans.
(L. 1979 S.B. 305)

408.600. Division directors to enforce provisions of sections 408.570 to 408.600 - complaints, how handled - hearings - remedies. - 1. Each division director shall enforce the provisions of sections 408.570 to 408.600. With respect to state financial institutions which he supervises, licenses or charters, each division director shall utilize the powers granted him under the general statutory authority by which he regulates, supervises, licenses, or charters such institutions, as well as the powers granted him by sections 408.570 to 408.600. The director of the division of finance shall enforce the provisions of sections 408.570 to 408.600 as they pertain to state financial institutions not supervised, licensed or chartered by a division director, and shall in that enforcement have such powers as are granted in said sections. The enforcement powers granted by subsections 2 through 5 of this section shall be utilized by the director of the division of finance concerning national banks, by the director of savings and loan supervision concerning federal savings and loan associations, and by the director of credit unions concerning federal credit unions.

2. Any person who alleges to have been aggrieved as a result of a violation of section 408.575 or 408.580 may file a complaint with the appropriate division director. Within ninety days of the receipt of such complaint, the division director shall determine whether there is any reason to believe that a violation of section 408.575 or 408.580 has occurred. If the division director determines that there is such reason, then he shall undertake to resolve the complaint by negotiation or he shall conduct a hearing in accordance with the provisions of subsection 3 of this section, except that the hearing shall be held in the locality where the alleged violation occurred.

3. If the division director, on the basis of an examination, an investigation of a complaint which has not been resolved by negotiation, a report required to be filed by section 408.592, or any public document or information, has reason to believe that a violation of section 408.575 or 408.580 has occurred or does exist, the division director shall conduct a hearing in accordance with chapter 536, RSMo. If the evidence establishes a violation of any provision of section 408.575 or 408.580, the division director may issue a cease and desist order stating specifically the unlawful practice to be discontinued, which order shall be served personally, or by certified mail. The decision of the division director shall be served personally, or by certified mail. The decision of the division director shall be appealable directly to the circuit court pursuant to chapter 536, RSMo.

4. If, after an order of the division director has become final, the director believes a violation of any provision of the order has occurred, he may seek an injunction to prohibit such violations in any court of competent jurisdiction. For each violation of such injunction, the court may assess a fine which may be recovered with costs by the state in any court of competent jurisdiction in an action to be prosecuted by the attorney general.

5. The remedies provided by this section shall not be interpreted as exclusive remedies but shall be in addition to remedies otherwise available to the director or to any individual damaged by a violation of sections 408.570 to 408.600.
(L. 1979 S.B. 305)

RIGHT TO FINANCIAL PRIVACY ACT

408.675. Citation of law - definitions. - 1. Sections 408.675 to 408.700 shall be known and may be cited as the "Missouri Right to Financial Privacy Act".

2. For the purposes of sections 408.675 to 408.700, following terms mean:

(1) **"Customer"**, any person or his authorized representative who utilized services of a financial institution, or for whom a financial institution is acting or has acted as a fiduciary, in relation to an account maintained in such person's name;

(2) **"Financial institution"**, bank, savings and loan association, trust company, credit union, consumer credit lender, consumer finance institution, persons who act as lender on loans governed by sections 408.100 and 408.120 to 408.190, persons who are sellers under a retail time contract or retail time transactions governed by sections 408.250 to 408.370, and any other persons, including, but not limited to, stockbrokers and brokerage firms, which accept money for deposit to an account on which checks may be drawn by the owner of such account;

(3) **"Financial record"**, an original, a copy, or information derived from any record held by a financial institution pertaining to a customer's relationship with the financial institution;

(4) **"Government authority"**, any agency or department of the state of Missouri or any agent thereof;

(5) **"Law enforcement inquiry"**, a lawful investigation, official proceeding, or grand jury proceeding relating to the commission of any crime;

(6) **"Subpoena"**, a judicial subpoena, an administrative subpoena, or other process expressly authorized by law;

(7) **"Supervisory agency"**, any agency or department of Missouri having statutory authority to examine the financial condition or business operations of a financial institution;

(8) **"Government investigation",** a lawful proceeding inquiring into a violation of any civil statute or any valid regulation, rule, or order issued pursuant thereto.
(L. 1989 H.B. 82 §§ 1, 2)

408.677. Government access to records, when - requirements. - Except as provided in section 408.690, no government authority may have access to or obtain copies of the information contained in the financial records of any customer unless the financial records are reasonably described and:

(1) Such customer has authorized such disclosure in accordance with section 408.682;

(2) Such financial records are disclosed in response to a subpoena which meets the requirements of section 408.683; or

(3) Such financial records are disclosed in response to a written request which meets the requirements of section 408.683.
(L. 1989 H.B. 82 § 3)

408.680. Financial institution may not disclose, exceptions, requirements. - 1. A financial institution, or officer, employee, or agent thereof shall not provide to any government authority access to the financial record of any customer except in accordance with the provisions of sections 408.675 to 408.700.

2. A financial institution shall not release the financial records of a customer until the government authority seeking such records gives notice in writing to the financial

institution that it has complied with the applicable provisions of sections 408.675 to 408.700.
(L. 1989 H.B. 82 § 4)

408.682. Customer authorization, requirements. - 1. A customer may authorize disclosure of his financial records if he furnishes to the financial institution and to the government authority seeking to obtain such disclosure a signed and dated statement which:

(1) Authorizes such disclosure for such period as may be agreed upon;

(2) States that the customer may revoke such authorization at any time before the financial records are disclosed;

(3) Identifies the financial records which are authorized to be disclosed;

(4) Specifies the purpose and the government authority to which such records may be disclosed; and

(5) States the customer's rights under sections 408.675 to 408.700.

2. Such authorization shall not be required as a condition of doing business with any financial institution.

3. The customer has the right to obtain a copy of the information which shall be disclosed to a government authority pursuant to sections 408.675 to 408.700, and the identity of the government authority to which such disclosure was made.
(L. 1989 H.B. 82 § 5)

408.683. Subpoena, government may obtain records with, when - procedure - notice required. - A government authority may obtain financial records pursuant to a subpoena if:

(1) There is reason to believe that the records sought are relevant to a government investigation;

(2) A copy of the subpoena has been served upon the customer or mailed to his last known address on or before the date on which the subpoena is served on the financial institution together with the following notice:

"Records or information concerning your transactions held by the financial institution named in the attached subpoena (or other process) are being sought by the (agency or department) in accordance with the Missouri Right to Financial Privacy Act for the following purpose: (state purpose with reasonable specificity)

If you desire that such records or information not be made available, you must:

1. State in writing that you are the customer whose records are being requested and give the reasons you believe the records are not relevant to the law enforcement inquiry stated in this subpoena or any other basis for objecting to the release of the records;

2. File the statement by mailing or delivering it to the clerk of the court which issued or has the power to enforce the subpoena;

3. Serve the government authority requesting the records by mailing or delivering a copy of your statement to it at the address stated in the notice; and

4. Be prepared to go to court or to the issuing authority and present your position in further detail.

You do not need to have a lawyer to represent yourself, although you may wish to employ one to represent you and protect your rights.

If you do not follow the above procedures, upon the expiration of ten days from the date of service or fourteen days from the date of mailing of this notice, the records or information requested therein will be made available. These records may be transferred to other government authorities for legitimate government investigations.";

and

(3) Ten days have expired from the date of service of the notice or fourteen days have expired from the date of mailing the notice to the customer and within such time period the customer has not filed a statement or a motion to quash in an appropriate court, or the customer challenge provisions of section 408.686 have been complied with.
(L. 1989 H.B. 82 § 6)

408.685. Delay of notice, allowed when - post-disclosure notice, form of. - 1. Upon application of the government authority, the customer notice required under section 408.682, 408.683, or 408.689 may be delayed by order of circuit court of Cole County or the circuit court for the principal office of the governmental agency if the court finds that:

(1) The investigation being conducted is within the lawful jurisdiction of the government authority seeking the financial records;

(2) There is reason to believe that the records being sought are relevant to a legitimate government investigation; and

(3) There is reason to believe that such notice will result in:

(a) Destruction of or tampering with evidence; or

(b) Intimidation of potential witnesses; or

(c) Otherwise seriously jeopardizing an investigation or official proceeding or unduly delaying a trial or ongoing official proceeding. An application for delay must be made with reasonable specificity.

2. If the court makes the findings required in subsection 1 of this section, it may enter an order granting the requested delay for a period not to exceed ninety days and an order prohibiting the financial institution from disclosing that records have been obtained or that a request for records has been made; except that, if the court finds that there is reason to believe that such notice may endanger the lives or physical safety of a person or group of persons, the court may specify that the delay be indefinite.

3. Extensions of the delay of notice of up to ninety days each may be granted by the court upon application, but only in accordance with this section.

4. Upon expiration of the period of delay of notification under this section, the customer shall be served with or mailed a copy of the process or request together with the following notice:

"Records or information concerning your transactions which are held by the financial institution named in the attached process or request were supplied to or requested by the government authority named in the process or request on (date). Notification was withheld pursuant to a determination by the (title of court so ordering) under the Missouri Right to Financial Privacy Act that such notice might (state reason). The purpose of the investigation or official proceeding was (state purpose in reasonable specificity).".

5. When access to financial records is obtained pursuant to section 408.692, the government authority shall, unless a court has authorized delay of notice, as soon as practicable after such records are obtained, serve upon the customer, or by mail to his last known address a copy of the request to the financial institution together with the following notice:

"Records concerning your transactions held by the financial institution named in the attached request were obtained by the (agency or department) under the Missouri

Right to Financial Privacy Act on (date) for the following purpose:

Emergency access to such records was obtained on the grounds that (state purpose in reasonable specificity).".

6. Any memorandum, affidavit, or other paper filed in connection with a request for delay in notification shall be filed with the court. Upon petition by the customer to whom such records pertain the court may order disclosure of such papers to the petitioner unless the court makes the findings required in subsection 1 of this section.
(L. 1989 H.B. 82 § 7)

408.686. Challenge to subpoena - procedure, appeals. - 1. Within ten days of service or within fourteen days of mailing of a subpoena, a customer may file a motion to quash the subpoena, or an action to enjoin a government authority from obtaining financial records pursuant to a written process. A motion to quash the subpoena shall be filed in the court which issued the subpoena or with the court that has the power to enforce the subpoena. Such motion or application shall contain a sworn statement:

(1) Stating that the applicant is a customer of the financial institution from which financial records pertaining to him have been sought; and

(2) Stating the applicant's reasons for believing that the financial records sought are not relevant to the legitimate law enforcement inquiry stated by the government authority in its notice, or that there has not been substantial compliance with the provisions of sections 408.675 to 408.700.

Service shall be made under this section upon a government authority by delivering or mailing a copy of the papers to the address in the notice the customer received.

2. The government authority may file a response, which may be the subject of a protective order if the government includes in its response the reason such order is appropriate. The court may conduct such additional proceedings as it deems appropriate.

3. If the court finds that there is substantial and competent evidence that the government investigation is legitimate and a reasonable belief that the records sought are relevant to that inquiry, it shall deny the motion and order such process enforced; provided, the court may order a limitation on the subpoena as a condition of enforcement. If the court finds that there is not such evidence that the law enforcement inquiry is legitimate, or that there is no such evidence that the records sought are relevant to that inquiry, or that there has not been substantial compliance with the provisions of sections 408.675 to 408.700, it shall order the process quashed or shall enjoin the government authority's subpoena.

4. Any appeal from an order issued under this section shall be in accordance with the Missouri rules of civil procedure.

5. The governmental authority obtaining the records shall promptly notify the customer if a determination has been made that no legal proceeding against him is contemplated. If no such decision has been made within one hundred eighty days from the date of the order granting access to the financial records, the governmental authority shall so notify the court and continue such notification at such intervals thereafter as the court may order.

6. The challenge procedures of sections 408.655 and 408.675 to 408.700 constitute the sole judicial remedy available to a customer to oppose disclosure of financial records pursuant to sections 408.675 to 408.700.

7. Nothing in sections 408.675 to 408.700 shall enlarge or restrict any rights of a financial institution to challenge requests for records made by a government authority under existing law.
(L. 1989 H.B. 82 § 8)

408.687. Financial institution to assemble records upon subpoena - delivery of records, when. - Upon receipt of a request for financial records made by a government authority under section 408.683, the financial institution shall, unless otherwise provided by law proceed to assemble the records requested and must be prepared to deliver the records to the government authority upon receipt of the notice required under subsection 2 of section 408.680.
(L. 1989 H.B. 82 § 9)

408.689. Transfer of records to additional agency, allowed when - notice. - 1. Financial records originally obtained pursuant to sections 408.675 to 408.700 shall not be transferred to another agency or department unless the transferring agency or department makes a written finding that there is reason to believe that the records are relevant to a legitimate law enforcement inquiry within the jurisdiction of the receiving agency or department.

2. When financial records subject to sections 408.675 to 408.700 are transferred pursuant to this section the transferring agency or department shall within fourteen days send to the customer the following notice:

"Copies of, or information contained in, your financial records lawfully in possession of (the agency or department) have been furnished to (the agency or department) pursuant to the Missouri Right to Financial Privacy Act for the following purpose (state with reasonable specificity). If you believe that this transfer has not been made to further a legitimate law enforcement inquiry, you may have legal rights under the Missouri Right to Financial Privacy Act. ".

3. Notwithstanding subsection 2 of this section, notice to the customer may be delayed if the transferring agency or department has obtained a court order delaying notice, or if the receiving agency or department obtains a court order authorizing a delay in notice. Upon the expiration of any such period of delay, the transferring agency or department shall serve the customer the notice specified in subsection 2 of this section and the agency or department that obtained the court order authorizing a delay in notice shall serve the notice.
(L. 1989 H.B. 82 § 10)

408.690. Nonprohibited disclosure activities. - 1. Nothing in sections 408.675 to 408.700 prohibits any supervisory agency from exchanging examination reports or other information with another supervisory agency. Nothing in sections 408.675 to 408.700 prohibits the transfer of a customer's financial records needed by counsel for a government authority to defend an action brought by the customer. Nothing in sections 408.675 to 408.700 shall authorize the withholding of information by any officer or employee of a supervisory agency from a duly authorized committee of the general assembly.

2. Nothing in sections 408.675 to 408.700, prohibits the exchange of financial records or other information with respect to a financial institution among and between the supervisory agencies of the federal Financial Institutions Examination Council and the Missouri division of finance.

3. Nothing in sections 408.675 to 408.700 prohibits the disclosure of any financial records or information which is not identified with or identifiable as being derived from the financial records of a particular customer.

4. Nothing in sections 408.675 to 408.700 prohibits examination by or disclosure to any supervisory agency

of financial records or information in the exercise of its supervisory, regulatory, or monetary functions with respect to a financial institution.

5. Nothing in sections 408.675 to 408.700 shall prohibit the disclosure of financial records or information required to be reported in accordance with any federal statute or rule promulgated thereunder.

6. Nothing in sections 408.675 to 408.700 prohibits disclosure if the financial records are sought by a government authority under the Missouri rules of civil or criminal procedure or comparable rules of other courts in connection with litigation to which a government authority is a party.

7. Nothing in sections 408.675 to 408.700 shall prohibit disclosure of financial records to the department of social services pursuant to sections 660.325 to 660.355, RSMo, or section 578.387, RSMo.

8. Nothing in sections 408.675 to 408.700 shall apply to requests made by the department of social services of the state of Missouri to obtain information from the federal parent locator service of the United States Department of Health and Human Services.

9. Nothing in sections 408.675 to 408.700 shall apply to prohibit a financial institution from complying with a properly served summons to garnishee or to written interrogatories exhibited to a financial institution which has been properly summoned as garnishee.

10. Nothing in sections 408.675 to 408.700 shall apply to prohibit a financial institution from complying with a properly served income withholding order issued pursuant to section 452.350 or 454.505, RSMo.

11. The requirements of sections 408.675 to 408.700 shall not apply when a government authority by a means described in section 408.677 and for a legitimate government investigation is seeking only the name, address, account number, and type of account of any customer or ascertainable group of customers associated with a financial transaction or class of financial transactions.

12. Nothing in sections 408.675 to 408.700 shall preclude any financial institution, or any officer, employee, or agent of a financial institution, from notifying a government authority that such institution, officer, employee, or agent has information which may be relevant to a possible violation of any statute or regulation. Such information may be disclosed notwithstanding any law, or regulation of this state or political subdivision of this state to the contrary. Any financial institution, officer, employee, or agent thereof, making a disclosure of information pursuant to this subsection, shall not be liable to the customer under any law or regulation of this state or political subdivision of this state for such disclosure or for any failure to notify the customer of such disclosure.

13. Nothing in sections 408.675 to 408.700 shall preclude a financial institution, as an incident to perfecting a security interest or proving a claim in bankruptcy, or collecting on a debt owing to the financial institution itself or in its role as a fiduciary, from providing copies of any financial record relevant to such action to any court of competent jurisdiction or government authority. Nothing in sections 408.655 and 408.675 to 408.700 shall preclude a financial institution as an incident to processing an application for assistance to a customer in the form of a government loan, loan guaranty, loan insurance agreement, administering or processing a default on a government guaranteed or insured loan, from initiating contact with an appropriate government authority for the purpose of providing any financial record necessary to permit such authority to carry out its responsibilities under such loan, loan guaranty, or loan insurance agreement.

14. Nothing in sections 408.675 to 408.700 shall preclude a governmental authority from obtaining information that is a part of a public record without regard to sections 408.675 to 408.700 even though such information may have been derived from a financial institution.

15. Nothing in sections 408.675 to 408.700 will preclude a governmental authority acting pursuant to sections 447.500 to 447.585, RSMo, from obtaining any information required by such sections for the purpose of administering sections 447.500 to 447.585, RSMo, without regard to sections 408.675 to 408.700; provided however, any information so derived shall not be used for any other purpose.

16. Nothing in sections 408.675 to 408.700 shall apply to a law enforcement inquiry or to a government authority or government employee engaged in a law enforcement inquiry.

17. Nothing in sections 408.675 to 408.700 shall apply to any requests made by any United States agency or department or any official employee or agent thereof authorized to obtain information from any financial institution if such agency or agencies are authorized by the federal Financial Privacy Act of 1978, as amended, to receive such information without compliance with the federal Financial Privacy Act of 1978, as amended.

18. The requirements of sections 408.675 to 408.700 shall not apply to the state auditor or any person appointed by him when obtaining information pursuant to section 29.235, RSMo.

19. Nothing in sections 408.655 and 408.675 to 408.700 shall apply to requests made by the Division of Employment Security pursuant to chapter 288, RSMo.

20. Nothing in sections 408.675 to 408.700 shall apply to examinations or audits of preneed trust accounts or joint accounts performed by staff of the division of professional registration when ordered by the state board of embalmers and funeral directors under the provisions of chapter 436, RSMo.
(L. 1989 H.B. 82 § 11)

408.692. Law not applicable to government authority, when - procedure. - 1. Except for sections 408.680 and 408.700 nothing in sections 408.675 to 408.700 shall apply when financial records are sought by a government authority:

(1) In connection with a lawful proceeding, investigation, examination, or inspection directed at the financial institution in possession of such records or at a legal entity which is not a customer; or

(2) In connection with the authority's consideration or administration of assistance to the customer in the form of a government loan, loan guaranty, or loan insurance program.

2. When financial records are sought pursuant to this section, the government authority shall submit to the financial institution the notice required by subsection 2 of section 408.680. For access pursuant to subdivision (2) of subsection 1 of this section, no further certification shall be required for the subsequent access by the applicable government authority during the term of the loan, loan guaranty, or loan insurance agreement.

3. After August 28, 1989, whenever a customer applies for participation in a government loan, loan guaranty, or loan insurance program, the government authority administering such program shall give the customer written notice of the authority's access rights under this subsection. No further notification shall be required for subsequent access by that authority during the term of the loan, loan guaranty, or loan insurance agreement.

4. Financial records obtained pursuant to this section may be used only for the purpose for which they were originally obtained, and may be transferred to another agency or department only when the transfer is to facilitate a lawful proceeding, investigation, examination, or inspection directed at the financial institution in possession of such records, or at a legal entity which is not a customer, except that:

(1) Nothing in sections 408.675 to 408.700 prohibits the use or transfer of a customer's financial records needed by counsel representing a government authority in a civil action arising from a government loan, loan guaranty, or loan insurance agreement;

(2) Nothing in sections 408.675 to 408.700 prohibits a government authority providing assistance to a

customer in the form of a loan, loan guaranty, or loan insurance agreement from using or transferring financial records necessary to process, service or foreclose a loan, or to collect on an indebtedness to the government resulting from a customer's default.

5. Notification that financial records obtained pursuant to this section which may relate to a potential civil, criminal, or regulatory violation by a customer may be given to an agency or department with jurisdiction over that violation, and such agency or department may then seek access to the records pursuant to the provisions of sections 408.675 to 408.700.

6. Each financial institution shall keep a notation of each disclosure made pursuant to subdivision (2) of subsection 1 of this section, including the date of such disclosure and the government authority to which it was made. The customer shall be entitled to inspect this information. Except for sections 408.696 and 408.700, nothing in sections 408.675 to 408.700 shall apply to any subpoena or court order issued in connection with proceedings before a grand jury.

7. Nothing in sections 408.675 to 408.700 shall prohibit a government authority from obtaining financial records from a financial institution if the government authority determines that delay in obtaining access to such records would create imminent danger of:

(1) Physical injury to any person;

(2) Serious property damage; or

(3) Flight to avoid prosecution.

Within five days of obtaining access to financial records under this subsection the government authority shall file with the appropriate court a signed, sworn statement of a supervisory official of a rank designated by the head of the government authority setting forth the grounds for the emergency access. The government authority shall thereafter comply with the notice provisions of subsection 5 of section 408.685. The government authority shall compile an annual tabulation of the occasions in which this subsection was used.

(L. 1989 H.B. 82 § 12)

408.693. Fee paid to financial institution, amount, how determined. - Except for records obtained pursuant to section 408.690, a government authority shall pay to the financial institution assembling or providing financial records pertaining to a customer and in accordance with procedures established by sections 408.675 to 408.700 a fee for reimbursement for such costs as are reasonably necessary and which have been directly incurred in searching for, reproducing, or transporting books, papers, records, or other data required or requested to be produced. The rates established by the board of governors of the Federal Reserve System shall, by regulation, establish the rates and conditions under which such payment may be made.

(L. 1989 H.B. 82 § 13)

408.695. Statute of limitations. - An action to enforce any provisions of sections 408.675 to 408.700 may be brought in the circuit court within three years from the date on which the violation occurs or on the date of discovery of such violation, whichever is later.

(L. 1989 H.B. 82 § 14)

408.696. Civil liability for violation, amount - disciplinary action against agency employee, when - good faith a valid defense, when - exclusive remedy. - 1. Any financial institution or an agency or department of the state of Missouri obtaining or disclosing financial records or information contained therein in violation of sections 408.675 to 408.700 is liable to the customer to whom such records relate in an amount equal to the sum of:

(1) One thousand dollars, without regard to the volume of records involved;

(2) Any actual damages sustained by the customer as a result of the disclosure; and

(3) In the case of any successful action, to enforce liability under this section, the costs of the action together with reasonable attorney's fees may be allowed by the court.

2. Whenever the court determines that any employee of an agency or department of the state of Missouri has violated any provision of sections 408.675 to 408.700 and the court finds that the circumstances surrounding the violation raise questions of whether an officer or employee of the department or agency acted willfully or intentionally with respect to the violation, the agency or department supervising said violator shall promptly initiate a proceeding to determine whether disciplinary action is warranted against the agent or employee who was primarily responsible for the violation. The agency or department after investigation and consideration of the evidence submitted shall submit its findings and recommendations to the administrative authority of the agency concerned and shall send copies of the findings and recommendations to the officer or employee or his representative.

3. Any financial institution or agent or employee thereof making a disclosure of financial records pursuant to sections 408.675 to 408.700 in good faith reliance upon a notice by any government authority shall not be liable to the customer or any other person for such disclosure.

4. The remedies and sanctions described in sections 408.675 to 408.700 shall be the only judicially recognized remedies and sanctions for violations of sections 408.675 to 408.700.

(L. 1989 H.B. 82 § 15)

408.697. Injunctive relief, allowed when. - In addition to any other remedy contained in sections 408.675 to 408.700, injunctive relief shall be available to require that the procedures of sections 408.675 to 408.700 are complied with. In the event of a successful action, costs together with reasonable attorney's fees as determined by the court may be recovered.

(L. 1989 H.B. 82 § 16)

408.699. Statute of limitations, tolled when. - If any individual files a motion or application under sections 408.655 and 408.675 to 408.700 which has the effect of delaying the access of a government authority to financial records pertaining to such individual, any applicable statute of limitations shall be deemed to be tolled for the period extending from the date such motion or application was filed until the date upon which the motion or application is decided.

(L. 1989 H.B. 82 § 17)

408.700. Subpoena issued under authority of grand jury, records, use of. - Financial records relating to a customer obtained from a financial institution pursuant to a subpoena issued under the authority of a grand jury:

(1) Shall be returned and actually presented to the grand jury;

(2) Shall be used only for the purpose of considering whether to issue an indictment or presentment by that grand jury, or of prosecuting a crime for which that indictment or presentment is issued, or for a purpose authorized by the applicable Missouri rules of criminal procedure;

(3) Shall be destroyed or returned to the financial institution if not used for one of the purposes specified in subdivision (2) of this section; and

(4) Shall not be maintained, or a description of the contents of such records shall not be maintained by any government authority other than in the sealed records of the grand jury, unless such record has been used in the prosecution of a crime for which the grand jury issued an indictment or presentment or for a purpose authorized by rules 5 and 6 of the Missouri rules of criminal procedure.

(L. 1989 H.B. 82 § 18)

THIS PAGE LEFT BLANK